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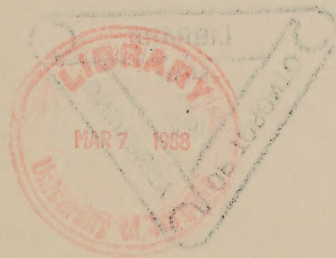
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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

MONDAY, FEBRUARY 22, 1988

Draft Transcript



SELECT COMMITTEE ON CONSTITUTIONAL REFORM

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Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

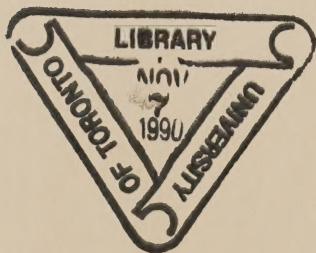
Individual Presentation:

Dupré, Dr. J. Stefan, Professor of Political Science, University of Toronto

From the Canadian Multilingual Press Federation:

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Monday, February 22, 1988

The committee met at 2:03 p.m. in room 228.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Ladies and gentlemen, we will begin our afternoon session. I want to welcome Professor Stefan Dupré, professor of political science at the University of Toronto, who will be our first witness this afternoon. Professor Dupré is certainly no stranger to Ontario government affairs, having served as chairman of the Ontario Council on University Affairs, the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario and the Ontario Task Force on Financial Institutions. I know this setting is not one that will put you ill at ease at all.

We are delighted that you could come and join us for the beginning of our third week of hearings. Everyone has a copy of the document you sent us. As I mentioned to you beforehand, I think we are fairly free in how to proceed, but if you want to provide your introduction and speak to some of the major points in the text, that would leave us a good bit of time to ask questions.

PROFESSOR J. STEFAN DUPRE

Dr. Dupré: I am in your hands, Mr. Chairman.

May I thank you and your honourable colleagues for the opportunity to appear before you. I do so as a warm supporter of the Meech Lake-Langevin accord. In holding these hearings, this Legislative Assembly is making its own vital contribution to the most recent episode in the long Canadian saga of constitutional reform. This saga did not and could not end with the Constitution Act of 1982.

That is because the Constitution Act is considered, by the bipartisan resolution of the Quebec National Assembly, to have been imposed on Quebec without its consent. A vital part of the constitutional law of this country has therefore been deemed illegitimate by the elected representatives of our second largest province.

To me, this is a symbolic monstrosity. Thanks to the Meech Lake-Langevin accord the Ontario Legislature, along with the other Canadian parliamentary assemblies, has the opportunity to purge the constitutional landscape of this monstrosity. I urge you, and through you all your assembly colleagues, to seize this opportunity by ratifying the Meech Lake-Langevin accord.

Because I have been a student of federal-provincial fiscal arrangements for more than 30 years, I thought it might be helpful for me to lay before you a detailed analysis of section 106A of the accord, which deals with the federal spending power. That analysis is contained in the 13-page document that follows the text of my introductory remarks.

To summarize very quickly, section 106A creates a federal constitutional

obligation to compensate a province which, while wishing to opt out of a future shared-cost program, is ready to mount a compatible program. In exchange for the federal obligation it creates, section 106A explicitly legitimizes federally conditioned payments to provinces in areas of exclusive provincial jurisdiction.

Viewed in this light, I submit to you that section 106A can be called a masterpiece of intergovernmental compromise. I submit as well that section 106A reduces the possibility that the federal spending power will be subject to private constitutional litigation in future and that its consequences for the conduct of fiscal relations by the duly elected federal and provincial governments of this country will be minimal.

I will elaborate at the close of these remarks, since you invited me to, Mr. Chairman. For the moment, may I ask you instead to permit me to close my introductory statement with a brief comment on the future of constitutional change in this country.

There are, as I see it, two possible scenarios. In the first scenario, the Meech Lake-Langevin accord fails to be ratified by Canada's 11 parliamentary assemblies. I submit to you that in this scenario the accord will simply have to be reinvented but, very likely, in circumstances that are far less auspicious than the present. Years, likely more than a decade, will pass during which all other items on the constitutional agenda, notably aboriginal rights, are on hold.

In the second scenario, the Meech Lake-Langevin accord becomes part of Canada's constitutional law. From this point forward we have a Constitution which is legitimate "from sea even unto sea." With the symbolic monstrosity of Quebec's dissent removed from the Canadian landscape, it will be possible to approach the constitutional agenda with a sense of proportion and a sense of priority.

I submit to you that a sense of proportion should speak for a hard-nosed approach to the need for further constitutional amendments. Constitutional amendments are only one of a number of alternative instruments whereby we can adapt to changing circumstances. They are often, in my view, an inferior alternative because of their relative rigidity.

We should therefore be mindful that in an area such as fisheries, to take an example, nonconstitutional federal-provincial agreements are an alternative which can accomplish much, as they did in the area of offshore mineral rights. Such agreements are more easily open to renegotiation than black-letter constitutional text and therefore more adaptable to unpredictable changes in our physical, social and financial environment.

Another alternative to constitutional change is the development of rights and freedoms through the enlightened statutory enactments of each of our elected legislative assemblies and through the regulations and spending programs pursued by our responsible cabinets. It is through such instruments, sensitive to local circumstances and readily adaptable to changing needs, that the government and Legislative Assembly of this province, to their credit, are advancing minority language rights.

If a sense of proportion speaks for rationing future constitutional amendments in favour of alternative instruments that are more responsive and adaptable to change, a sense of priority with respect to the Constitution speaks for an approach to possible amendments that focuses on individual items

rather than large packages and that permits detailed scrutiny of their possible implications before first ministers and their governments commit themselves to firm proposals.

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The Constitution that we have is not simply the outcome of intergovernmental bargaining. Its very language bears the unmistakable imprint of community groups which represent the people of Canada on the basis of such shared characteristics as gender, race, ethnicity and physical and mental handicaps. This constitutional language, so apparent in the Charter of Rights and Freedoms, is there because these groups were heard in the winter of 1980-81 by a joint parliamentary committee well before the November 1981 intergovernmental negotiations which yielded the Constitution Act of 1982.

In my respectful view, two pertinent observations follow. The first is that the Constitution which the Meech Lake-Langevin accord seeks to legitimize from sea to sea is well and truly a people's constitution. The second is that legislative committees such as this one have an important future role as forums in which the views of citizens and their associations can be publicly recorded and searchingly examined with respect to the possible content of future amendments that first ministers might subsequently consider. It is on the basis of occasional hearings of this kind that informed judgements concerning specific constitutional priorities might come to be formulated.

Mr. Chairman, you asked me to elaborate a little bit as part of my opening remarks on the longer technical analysis of section 106A that I laid before you. Let me draw your attention to the middle of page 4 of this analysis where I expressed the view that section 106A is a stunning expression of the art of compromise.

To elaborate, I note that section 106A is completely silent on the matter of federal payments to institutions which are under provincial jurisdiction. As such, section 106A recognizes the effectiveness of the political limitations on such payments in the past while, at the same time, leaving their future configuration to coming generations of politicians and citizens.

If I may editorialize, I am very much of a Jeffersonian in matters of constitutional change. No generation should easily assume the task of binding future generations through overly rigid constitutional provisions. To me, section 106A in, for example, leaving the whole matter of federal payments to institutions that are under provincial jurisdiction open to the political process, leaves this important matter where it belongs, that is, with the future generations who will want to grapple with these questions.

I note further that section 106A is silent on the matter of federal payments to individuals. We have had past constitutional suggestions: the Victoria charter contained one such suggestion which flirted with constitutional limitations on the capacity of Ottawa to make payments directly to individuals in areas of provincial jurisdiction, for example, adult training allowances. Section 106A has nothing to say about such federal payments to individuals and, accordingly, the most visible and, as we know from history, politically potent manifestations of the federal spending power are left uncurbed.

As to what section 106A addresses, it does create a federal obligation towards an opted-out province rather than any kind of limitation on the

application of its federal spending power, even to shared-cost programs. You search section 106A in vain, as a matter of fact, for any of the limitations on what could constitute a shared-cost program with which past products of attempts at constitutional reform sought to hedge the initiation of such programs by Ottawa.

I note finally that section 106A features a quid for the quo of the constitutional obligation it imposes on the federal government vis-à-vis an opting-out province. The explicit reference in section 106A to shared-cost programs with national objectives in areas of exclusive provincial jurisdiction is something that is new and something that shifts the legitimization of these manifestations of the federal spending power from rather obscure statements made by courts in the past to the black letters of constitutional text.

I repeat that, as the language of section 106A makes clear--I refer to its opening words: "The government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the government of Canada after the coming into force of this section." There is the language that creates the constitutional obligation to compensate an opting-out province from a future national shared-cost program.

It is accompanied in the very same sentence with the quo that is exchanged for the quid of that obligation, namely, "in an area of exclusive provincial jurisdiction." The sentence makes clear that the government of Canada is in line with the Constitution when it has national shared-cost programs in areas of exclusive provincial jurisdiction.

As a later page in my technical analysis points out, not least of the advantages that I see accruing from a black-letter text recognition of the legitimacy of the federal spending power in areas of provincial jurisdiction is that private litigants--be it a medical association or any other kind of group that has its own special-interest stake in trying to curb the federal spending power--will be deterred from challenging the judgement of the elected representatives of the day by trying to trump them in court.

I can elaborate further, if you will, Mr. Chairman, but I am in your hands and in those of your colleagues.

Mr. Chairman: On page 11 and following in your brief, on the conduct of federal-provincial fiscal relations, I thought there were some interesting suggestions there. I wonder if you could touch on that before we go to questions.

Dr. Dupré: Certainly. One observation that I make on page 11 is one I have addressed to those who do worry that section 106A might somehow or other give rise to a multitude of opting-out situations as provinces try to cash in, so to speak, on the constitutional obligation that the federal government now has to bear to compensate them for opting out. What I note in my analysis and what I telegraph in the middle of page 11 is that, of course, the constitutional obligation to an opting-out province arises only vis-à-vis a province which wishes to opt out of a matter that is indeed exclusively under provincial jurisdiction.

The point of my analysis is that federal-provincial fiscal relations as they have evolved in the last two decades normally have not involved matters that are exclusively under provincial jurisdiction. Instead, they have

involved some of the so-called grey areas of the Constitution, areas where, for example, municipal affairs becomes urban planning or housing, areas where education becomes manpower training.

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Let us take child care, which is very contemporary, as an example. Is child care a matter of exclusive provincial jurisdiction? I put it to you that it is a matter of exclusive provincial jurisdiction only if one insists that child care is, in quotes, early childhood education, but that child care, as we all know, can be just as easily a matter of labour-market adjustment to enable parents to participate actively in the labour force. I put it to you that child care, which is so contemporary, is a very good example of an area, actual as well as potential, of federal-provincial fiscal relations. It is very likely not an area of exclusive provincial jurisdiction. At worst, it could be an area of exclusive provincial jurisdiction only if a federal child care initiative had been deliberately framed to be that way.

In brief, given the tendency of federal-provincial fiscal relations, a tendency well documented over more than 20 years of practice, to involve areas of public policy which are the so-called grey areas of the Constitution, I do not see the existence of section 106A, assuming it were to become part of the law of the Canadian Constitution, as having any kind of an impact on the way elected politicians--I like that term precisely because it reminds us always that elected politicians are the outcome of the freely exercised choices of future generations--conduct our federal-provincial fiscal relations.

This is why, when I was wrapping up my paper, one of the points on which I closed was that one of the great advantages I saw to section 106A in particular is that fiscal relations would remain insulated from the dead hand of any particular generation of Constitution writers, and for that matter, from the opinions of a judiciary with no particular claim to fiscal expertise or sensitivity.

Mr. Chairman: Thank you very much. As elected politicians, it is always nice to hear some reason why we should continue to exist over and above judges, if one is permitted to express that view.

Dr. Dupré: One of your greatest claims to that legitimacy, as you well know, is precisely that your tenure is temporary.

Mr. Chairman: Right; as we are made only too often aware. Thank you very much for elaborating on some of the points that are in the brief attached to the presentation. I know there are various other aspects which we will want to look at, if not in the discussion which will now follow, certainly when we are considering particularly section 106A. I will turn then to questions and begin with Mr. Breaugh.

Mr. Breaugh: One of the problems a lot of us have with the agreement itself is that there is no Hansard, no record of what people intended to do, no concept of what bargaining went on back and forth. It puts us at a bit of a disadvantage in that normally in an exchange by politicians, you can get a clear idea of what somebody is trying to do if you can read what the argument was. In this instance, we see only the result of the arguments.

Much of the concern that has been expressed to us is about this section 106A routine. I have to tell you that I read that, and as I read it I said, "That is describing business as usual in Canadian politics." If it has done

anything any differently, it has laid down some ground rules for those who want to opt out which were not there previously. As I run over the Canadian experience, it is pretty hard to come up with something that was not done in something like that kind of formula or that milieu, whether it is policing, pensions, medicare, education, building roads or whatever.

Is there anything I am missing in this one section, because this sure has everybody rankled in the area that this is going to balkanize Canada? I do not know what the hell is wrong with the Balkans that they are so bad and Canada is so good, but apparently this has now become an evil term, that there will be a variety of social and educational programs from one end of the country to the other. It strikes me there now is. It strikes me we do not even build a road the same in northern Ontario as we do in the south. You cannot compare social services, education, rinks or libraries from one end of the country to the other because they do not fit. Everybody builds them according to a local standard. Is there anything I am missing in this section? What is it that is in here that has everyone so upset that awful things are going to happen?

Dr. Dupré: I have had to ask myself the same question, Mr. Breaugh. Let me say that, like you, I have found it very hard to come up with an answer. Your own memory very correctly brings out that we have had all kinds of opting out from shared-cost programs in this country. There is a history there that goes back to the 1960s.

Let us not forget as well, if you will permit, Mr. Chairman, that we had a well-known instance of opting out of a wholly federal spending program to institutions. I refer of course to the university grants of the 1950s, which Quebec opted out of. This was an entirely federal program. It was not a shared-cost program. We have had opting out of entirely federal payments to individuals. That is the case of Quebec with the so-called youth allowances of the late 1960s.

Looking at it the other way around, again just to embroider on the excellence of your recollections, we have had opting in--

Mr. Breaugh: You cannot accuse me of having a good memory; come on.

Dr. Dupré: We have had opting in of all kinds. For example, all provinces except Ontario and Quebec opt into police services provided by the Royal Canadian Mounted Police.

I guess the only point becomes this: I come around to an answer to the question that you so rightly pose. After I have simply considered all the kinds of opting out that have taken place and observe that every one of these situations involved a political response to a particular set of problems as they were viewed by duly elected and responsible federal and provincial officials at the time those particular arrangements were arrived at, the only thing that section 106A does is to single out a particular small area, shared-cost programs in areas of exclusive provincial jurisdiction, and say that under circumstances which I think are relatively hard to conjure, but it does not matter, there is a constitutional obligation to compensate the opted-out province.

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I can sympathize with anyone who is a little taken aback by this, simply because of my Jeffersonian bias which always leads me to say, "Why put

something down in a constitutional text rather than leave future generations completely free to play with it?" Having answered your question that way, in brief what I am saying is that if I have to regret something, I regret putting any part of this in the Constitution, including section 106A.

At this point I have to let memory speak again--I am sure yours speaks as mine does--and recall, going back to the Confederation of Tomorrow Conference which this government hosted at the Toronto-Dominion Centre in 1967, that Quebec had, as a demand on the table, limitations on the federal spending power. I look over time at the different attempts that were made to cope with this demand. They included, for example, attempts to limit the way the federal government can define the shared-cost program. You do not find that in section 106A. They included as well a limitation on federal payments to individuals. You do not find that in section 106A.

What you find in section 106A is, therefore, as my analysis concludes, a truly minimalist response to that very long-standing Quebec demand. It is certainly a minimalist response which, as a Jeffersonian, enables me to sleep quite decently. I do not think it hamstrings future generations in any significant way.

Mr. Breaugh: Let me just pursue that a bit. In today's political climate, most of what any jurisdiction wants to do infringes in some way on somebody else's. It is rare in politics today to see a nice, clean sweep where the obligation to fund, for example, is clearly on one level of government. Virtually everything we do is shared-cost and most of our traditional ways of putting it into little boxes is breaking down.

I watched Mike Dukakis defend his training program in Massachusetts over the weekend by simply saying: "We were trying to get single-parent mothers back into the work force. Nothing we could think of would work because the biggest single problem was that they had children to look after." If this was not done in conjunction with some kind of child care program, it was not going to function, and if it was not done in conjunction with some kind of job placement program, it would not work.

Most of what we are running into here is the same kind of thing, that you cannot solve problems any more, it seems, by just picking those that are in your jurisdiction and choosing to do that. You must decide what the problems are and then attack them no matter whose jurisdiction they are in. It seems to me that if there is something in here that is different, maybe it is that there is now a ground rule, so to speak, of how you would go about determining exactly who is opting in and who is opting out. Where we used to kind of negotiate a political settlement--"Here is some money; go away"--now they say: "Here are some standards. If you meet them, fine. If you don't, you're out."

That really is the only thing in that section which I see as being substantively different from what we have done. Is there something I am missing there again?

Dr. Dupré: No, I do not think you are missing a thing, sir. Might I simply say, however, that while your observation is correct, it may perhaps unduly magnify, if I might say, what section 106A is really getting at. I say this because of the kind of end result of it that you outline, that there comes a point where a province has to be given money in return for meeting the program's objectives. That arises only when the subject matter of a program is indeed in an area of exclusive provincial jurisdiction. As I think you

absolutely correctly put it on your way up to your description of the outcome, in this day and age the federal and provincial governments, and for that matter the municipal governments which come under provincial jurisdiction, are involved in problems and in meeting demands of the time that simply cut across these jurisdictional lines.

Governor Dukakis, when he refers very correctly to the Massachusetts problems with child care as being very intimately allied to the job opportunities of parents, is not talking about a matter of education primarily; he is talking about a matter of labour-market adjustment. Under the Canadian Constitution, there is a classic example, if ever there was one, of a grey area where both the Parliament of Canada and the legislature of a province share jurisdiction.

Mr. Breaugh: Let me pursue one other point that is related to this. In going over why this has got so many people upset, I could not quite grasp what it was that was disturbing them, but it is certainly hitting a lot of people. Perhaps it is this, and the one area where I have a bit of concern is simply this: There may well be federal programs operating here in the city of Toronto. One that was newsworthy over the weekend again is, what do we do with parolees and halfway houses and things like that?

The federal government is a long way away from most human beings in the world, so it can sort of sit back and say, "We have to do something with these people, so we will put them in a halfway house. This gets them ready for a return to society." They are in a much better position to do a theoretical argument on this than any other level of government. Everyone else is sitting with his jaw hanging out, facing the irate citizen. At the municipal level, and to some lesser extent at the provincial level, the response is apt to be much more direct to the human need. "There is something screwed up in my community again. Why don't you guys fix it?"

Is there a temptation in this section to say that whenever the provincial governments disagree with what the federal government does, that they will in effect opt out, that they will say, "Shut down your program and we will start up our program which is better and you will have to fund it"? I can think of two or three hot political issues: the Supreme Court decision on abortion, halfway houses, things of that nature, where there is going to be a local furore.

Now the federal government is splendid in its isolation oft-times. It can kind of escape these turmoils. At the lower levels of government, you do not; you just simply cannot. Is there any concern that is valid that provinces would say: "Take your federal program to hell out of here. We will set up one which meets your standards, but we will run it much better than you do"?

Dr. Dupré: Yours is a multipart question, and if I may, I will give you a multipart answer. First of all, to the extent that one is looking at examples like halfway houses, what we are looking at here is the offshoot, where criminal offenders are concerned, of what is a wholly federal constitutional matter.

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Mr. Breaugh: Basically.

Dr. Dupré: It does not involve a shared-cost program either. But of course in something like what you mention, why not? If it is a hot issue and

it happens to be one level of government that is stuck with it, there is going to be an initial response, in my experience, that not only elected officials might take from time to time, but those appointed public servants as well, of: "Go look to the other level of government. They are the ones who are causing this problem."

At this point comes a second part of my multiple response to your multiple question. Frankly having been, among other things, a provincial public servant I cannot let go by--without some qualification--your characterization of a province as somehow or other being quite close to the grass roots, as distinct from the feds who are there in Ottawa.

I myself have not only experienced, but fought, what I have sometimes described as the Queen's Park Seminar Room Syndrome, whereby the view of Ontario from Queen's Park does not do credit to the enormous heterogeneity of this province and the enormously variegated needs of different communities; which needs, of course, come home to roost with the local politicians. Of course, in terms again of the particular situation that you have described, I think we are all aware that residents of so-called halfway houses are as much a product of provincial so-called deinstitutionalization policies--for example, with respect to the mentally handicapped--as they are the product of federal policies.

Of course, at this point I can readily understand why a federal official or a federal MP might say that a lot of this halfway house problem really is the fault of those evil provinces. But at this stage of the game, I think my long, round about reaction to your multiple-part question brings the two of us very much on line with respect I think to the following observation: most areas of policy these days completely transcend a federal and provincial jurisdiction. They are therefore areas that involve responsibilities that are difficult for the elected or appointed officials of either level of government to escape, and certainly they do not characterize the so-called areas of exclusive provincial jurisdiction; at least with section 106A--

Mr. Chairman: Just as a follow-up on Mr. Breaugh's question, one of the matters that some people have raised is what is meant by "national objectives" versus "national standards" and the suggestion that there is something quite different meant by each of those. Do you subscribe to that? Do you see a problem as compatible with national objectives or compatible with national standards in terms of how that might be read by the courts?

Dr. Dupré: I am aware of the points that are made by those who wish to address the minutiae of the language as it is used in section 106A: what is the difference between a "program" and "initiative," what is a national objective, what constitutes compatibility with the national objective?

I guess this is where my Jeffersonian bias, in part, comes home, both to make me a little critical but, at the same time, to assuage my worries. Constitution writers, of course, conscious that what they are writing may have an impact on future generations, do indulge very often in the temptation to think that they are writing on marble for all time and that therefore the use of a particular word, like "policy" as opposed to "program," or "initiative" as opposed to "objective," is important.

What I bring to that situation is a very healthy amount of skepticism. If you are going to write anything down in black-letter, constitutional text, what you have to admit is that the meaning of the words that you are so laboriously writing will come to be definitively interpreted over time by

judges, likely by future generations of judges. It is future generations that I always feel are a little bit better, but I am still not of course altogether happy, although I am rescued by the sense of perspective that I get from the following.

If you are going to say anything in a constitution, to start off with, do not, as a contemporary constitution writer, delude yourself with the possibility that if you had chosen one particular word or put in a particular word, the outcome might have been different. As we all know, it is undoubtedly Sir John A. Macdonald himself who learned this lesson best of all. He inserted, as we all point out when we lecture to students on the subject, the words "the regulation of trade and commerce" in section 91, being very proud of that exact use of words without any limitations, such as regulation of trade and commerce among the provinces or with foreign countries, precisely because to him in 1867 the regulation of trade and commerce unqualified meant the regulation of trade and commerce everywhere, including interprovincial commerce.

Sir John A. was still very much on the scene 14 years after 1867 when in the famous Citizens' Insurance versus Parsons decision, the judicial committee of the Privy Council pointed out that in its definitive interpretation, regulation of trade and commerce, notwithstanding the fact the words were there, meant regulation of trade and commerce among provinces and with foreign countries.

Mr. Offer: Dr. Dupré, it seems from your presentation today that you have been almost changing our focus in that those concerns that we have heard from other persons about in section 106A seem to deal with the phrase "compatible with the national objectives." I sense from your presentation that it is almost the phrase "the exclusive provincial jurisdiction," with which you are dealing in saying that in this country, at this time, very few things are or could be deemed to be of an exclusive provincial jurisdiction which would never need any federal matter. It is interesting that in your presentation, we are changing that focus--but just to share with you some of the concerns that we are hearing.

What follows from the concerns based on the focus of compatible national objectives seems to be that national programs, such as child care, could not, would not come into existence if there were a section 106A, but there would not be the political will at the federal level to institute programs which may now or may not be within an exclusive provincial jurisdiction because of the fact that the province can now, under section 106, opt out.

I am wondering if, from your experience, you can indicate or share with us some of your thoughts on that concern that has been raised.

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Dr. Dupré: I thank you for that question, not least because if you have been getting views that focus on other parts of the language of section 106, I have not been wasting your time by focusing on another aspect.

Let me put it to you this way. Could section 106A create a pattern of what Prime Minister Trudeau used to like to call "checkerboard federalism" in the area of child care or day care, with all kinds of provinces opting out all over the place saying, "God knows what may or may not be compatible?"

My short answer to that would be the following. If the federal

government decided--and this would have to be a deliberate cabinet decision--to mount a shared-cost, child care program which provided every province with half the cost of pre-school education in publicly supported elementary schools in the province, at that stage of the game, there is no doubt in my mind that the federal government would have designed a child care program which, because it focused on early childhood education, given section 93, is a matter of exclusive provincial jurisdiction and therefore of course subject to triggering the constitutional obligation to compensate any province that wishes to opt out.

Then of course, presumably, if I just let my experience in federal-provincial matters be my guide here, what would ensue, vis-a-vis the opting out province, would be some kind of a negotiation concerning what is the equivalent of providing some places in the elementary school system for these pre-schoolers, and then you would compensate them for that.

The problem I have is--if you will pardon me for saying so, Madam Chairman--that would be a very a very odd way to design a child care program, because child care or day care, especially when it is looking at pre-school children, as I understand it, would and should be designed with an eye on a wide variety of not only public but also private institutions which may or may not involve matters of provincial jurisdiction.

Let us take an area where the term "education" can arise, but where older individuals are concerned, the whole area of so-called "manpower training." Certainly we have a history of some federal-provincial disputes at which provincial ministers, provincially appointed officials, including I might say since I wrote a book on the subject, prominent provincial ministers and officials of this province have, for rhetorical purposes, postured that manpower training is education and therefore under provincial jurisdiction.

When all is said and done and you examine the federal-provincial programs and relations that have been involved as ongoing enterprises, what was involved was classically a grey area of the Constitution in which, among other things, job placement and the matching of specific skills to specific employment openings, which is very much a matter of the labour market, not educational policy, were paramount.

As I would see it--and I think I see it in the kind of child care initiatives that both Ottawa and Queen's Park have been looking at--what is being examined are initiatives that cut across a wide variety of areas and cannot be pinpointed as involving an area of exclusive provincial jurisdiction, and therefore, were section 106 to become part of the law, triggering that constitutional obligation.

Mr. Offer: If I might continue for just one moment, I am certain from your response that given the type of programs we deal with on the provincial, federal and even the municipal level today in terms of their complexity and in terms of the elements and the factors they touch upon, the implementation of section 106A, realistically speaking, would not impact on the federal government instituting these types of national programs.

Dr. Dupré: That is correct. If I might just elaborate for the record, I have heard the criticism made that that section 106A might impede federal-provincial development in the areas of pension, disability, no-fault insurance in the automotive realm and so on and so forth. I just do not see that possibility for the simple reason that pursuant to section 94A of the Constitution, such matters are already matters of concurrent

federal-provincial jurisdiction with provincial paramountcy. So you have a quite different constitutional setting that would be involved in any kind of negotiations in these policy matters and section 106A would not apply.

Mr. Eves: My questioning is on a somewhat different tack. I would concur with a lot of your remarks with respect to section 106A, but we have had two groups before us, namely, as I am sure you are aware, the delegations from the Northwest Territories and the Yukon, who feel they are being somewhat prejudiced by the Meech Lake accord. Also, we have heard from numerous groups, but I suppose mostly from women's groups, concerned about whether or not the wording of the accord is going to somehow jeopardize their equality rights under the Charter of Rights and Freedoms. I just wondered what your comment was with respect to both of those matters.

Dr. Dupré: With respect to the two territories and their ambitions or expectations of provincial status, we have to bear in mind that prior to the Constitution Act of 1982, they had a most open road to provincial status relatively speaking, because of course the creation of provinces out of both territories pursuant to the old Constitution Act of 1867 was exclusively a federal matter. So in terms of the legislative arenas and executive arenas that they had to convince, there was only one to get the provincial status camel through the eye of the needle.

Now, the Constitution Act of 1982, by requiring in addition to the federal Parliament the consent of seven provinces with half of the population, certainly laid a roadblock or an added set of complications--at least seven to be specific--on the way to provincial status.

Bearing in mind from a northern territory perspective that the possible sources of evil in particular are the four prairie provinces, any one of which might want to expand northward, as was the case with Ontario way back at the turn of the century, the move to unanimity is seen as constituting an additional roadblock. From their perspective, I think that has to be taken as a given.

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With respect to the position that certain spokespeople for women's groups have taken, I just want to put on the record the following: With respect to the concern that arises from the fact that section 28, the equality-of-gender clause, is not mentioned in section 16, the best analyses of the subject that I have read are two, one by Professor Katharine Swinton of the University of Toronto law school and the other by Professor Donna Greschner of the University of Saskatchewan. Both wrote papers that were given at a U of T conference last October.

The essential point that both papers make is that the reason that section 16 of Meech Lake-Langevin mentions only sections 25, 27 and 35 out of the Constitution Act of 1982 is that these are interpretation clauses. So, of course, the "distinct society" clause, being another interpretation clause, is limited by the section 16 point that nothing in the "distinct society" clause will affect the other two interpretation sections.

The point that Professors Greschner and Swinton make is that section 28 is not an interpretation clause but a substantive rule. At this stage of the game, perhaps in the realm of constitution-writing, we are brought back to considering the irony that constitutional writers are damned when they do and damned when they do not. To have included section 28 in section 16 could have

damned them for seemingly downgrading section 28 from a substantive rule to an interpretation clause. Section 28 is not mentioned in section 16, so they are damned because it is not there. Those are the perils of constitution-writing.

Mr. Eves: Their point being, of course, that there is opinion the other way and they are somewhat up in the air in their minds anyway. There is some ambiguity at least, some vagueness as to what the ultimate interpretation will be.

We have heard a lot of groups, and I think I can say that probably almost ever member of the committee is somewhat concerned about the processes, how this accord came about, how it was arrived at and when the public generally had an opportunity for input. I believe Quebec was the only legislature--there might have been one other--that held public hearings between the first draft in late April and the final draft on June 2 and 3, 1987.

Do you have any advice for us with respect to how we should approach these matters in the future? There again, as you say, I suppose you are damned if you do and damned if you do not.

Dr. Dupré: I guess the good news where the future is concerned is that if the Meech Lake-Langevin accord is ratified--and I emphasize "if" because I never count my constitutional chickens before they are hatched--but if the Meech Lake-Langevin accord is ratified, what I have called a symbolic monstrosity will have been removed from the constitutional landscape.

Let us not forget that Meech Lake-Langevin is the offspring of what has to be called the significant failure of 1982, whereby one of the legislatures of this country declared that the Constitution Act of 1982 was being imposed upon it and was, therefore, illegitimate. Quite understandably, therefore, what you have had is an intergovernmental bargaining process, which I might point out distinctly follows two election campaigns, a federal 1984 election campaign and a provincial 1985 election campaign in Quebec, at which the matter of removing this so-called symbolic monstrosity was very publicly discussed and indeed put forward as a campaign promise by the two ultimately successful party leaders.

In that sense, there has been an openness but, in terms of the future, what I hold out to you in my opening remarks is what I hope might be the scenario, that constitutional changes, when they are examined, will be looked at selectively and can be subject to any of a number of open inquiries and hearings prior to being put on the negotiating table of first ministers.

Mr. Cordiano: I want to follow up on that with respect to the process. It is now the case that we are going to have annual conferences on the Constitution. I do not know if you are in agreement with that, but certainly that is the case. It is written right into the Meech Lake accord and, obviously, we are trying to grapple with that as a committee and as provincial legislators.

If we are going to be a part of this ongoing process, which is an evolutionary development of procedures to follow and the fact that we are going to have the annual conferences, we are trying to come up with a mechanism whereby there is an opportunity to intervene before agenda items are discussed or some other possible scenario whereby people will have input into the entire process of constitutional reform.

Do you have any specific recommendations or ideas for us as a provincial Legislature, and indeed other provincial legislatures, if they are to be as involved as we are now in constitutional reform? It has been leading up to this over the years anyway, and we are getting to the process where we certainly have to play a larger role. We are trying within ourselves to come up with solutions that will enable us to participate in an efficient, effective manner with the larger public. In fact, you claim that this is a people's constitution, and we are trying to conceive of that notion in the entire reform process.

Dr. Dupré: I particularly appreciate your posing the question you pose to a Jeffersonian because it does force me to admit that constitutionalizing an obligation to hold conferences about a constitution is not--shall I put it this way?--the high point of the Meech Lake accord.

On the other hand, with respect to what it does to future generations, it does create an obligation that they at least talk without necessarily producing a stream of outputs that might be overly binding on future generations. One point that I take from this is that my own biases, if you want to put it that way--I can back them up with some analytical concerns that I will not bother you with--my own biases would lead me to express the hope that at least the output of such annual conferences would be very much rationed. That is number one.

Number two, with respect to the first of the two items that are named, and there are only two specific items named, aboriginal rights and fisheries, we have been obligated to hold constitutional conferences on aboriginal rights already by section 37. I think the message where that first constitutional item is concerned to all of us who are not the original inhabitants of this country is that we had perhaps better take that one seriously and move something.

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To me, that is the most important priority on the agenda of the Constitution, certainly for some period of time down the street. To the extent that the legislative assemblies through their committees of the different provinces provide opportunities for aboriginal and other native groups to have an input in a relatively open forum, I think this can only be advantageous. It has to be recognized that the reports of legislative committees themselves only become part of the input of the process. After all, if you are going to get down to text on aboriginals, it will be like text on Meech Lake. Somebody has to lead, and that is where we have first ministers from 11 different jurisdictions, who under our constitutional system are supposed to provide that leadership of actually getting things done.

The Vice-Chairman: I am sure I speak on behalf of the entire committee when I say thank you very much, Professor Dupré, for your excellent presentation today. We know it is going to be helpful to us in the next month coming up. I am sure it has taken a long time for you to come to these conclusions, and we appreciate your taking the time to come here today and express them to us personally. Thank you very much.

Dr. Dupré: Madam Chairman and honourable members, it has been an honour. Thank you very much for all the questions.

The Vice-Chairman: I believe now we have a presentation by the Canadian Multilingual Press Federation, Mr. Gregorovich and Mr. Saras. I

assume the spokesman is going to be Mr. Gregorovich. Is that correct? We would ask you just to proceed. We have received copies of your written presentation.

CANADIAN MULTILINGUAL PRESS FEDERATION

Mr. Gregorovich: Thank you very much, Madam Chairman. The brief we are presenting to you today represents the opinions of the multilingual or ethnic press of Canada, which includes the Ontario multilingual press as well. We are not speaking on behalf of the Ontario multilingual press federation; however, we are speaking on behalf of a group of publications which number something like 40 languages and something like three million readers, so it is a very highly representative group of Canadians, basically representing the heritage of about one third of all Canadians.

I am not sure whether the chair wished me to read some parts of the brief that I thought were significant or whether we should discuss in general terms, since the members of the committee have not had an opportunity to actually peruse the brief before we arrived. I am not sure what is your best--

The Vice-Chairman: Whatever you think is most appropriate to bring us up to speed with respect to your particular viewpoint.

Mr. Gregorovich: I think it would be useful then to touch on some points within the brief, and then we can go into the questions.

The federation itself requires a little bit of history. It came into being 30 years ago. In other words, we were not founded yesterday; we are 30 years old. It is the national organization representing the multilingual or ethnic press of Canada. "Ethnic" is the older and more familiar word for most people.

The federation represents and co-ordinates the provincial press associations in Quebec, Ontario, Manitoba, Alberta, British Columbia and also the Ottawa region. About 130 newspapers and magazines in 40 languages, with about three million readers, are represented by the federation. It is the publications voice of about eight million Canadians constituting about one third of the population of Canada. This third-element group comprises all those of other than British or French origin including, for example, the Chinese, Italian, German, Greek and Ukrainian Canadians as well as our native Indian and Inuit peoples. -

The main objectives of the federation are to represent and promote the interests of the Canadian multilingual or ethnocultural press and to assist in explaining and interpreting Canadian society to multilingual readers. Another major interest is the integration of ethnic cultures into Canadian society to enrich Canada's culture and to make a reality of the official government policy of multiculturalism in Canada. The multicultural press complements the English and French press and provides all Canadians with the opportunity to celebrate and preserve their ancestral heritage through their heritage language.

I think I can proceed from that and go on to a section a little bit farther on. I thought it was significant that in the Toronto census area, which is a major portion of Ontario's population, I guess you could say, there are interesting statistics that indicate the importance of the multilingual press and the multicultural aspect of Canadian society.

In the Toronto census area, British ancestry has dropped from 1,390,005

or 48 per cent to 968,190 or 28.5 per cent between 1981 and 1986. The largest non-British groups are the Italian with 292,000, the Chinese with 126,000, the Jewish with 109,000, the South Asian with 106,000, the Portuguese with 98,000, the Black with 90,000, the German with 73,000, the French with 65,000 and the Greek with 62,000. This is a reminder of the diversity of origin in the populations of not only Toronto but also Ontario and Canada.

It is the growth of the population of the third element which has led to the growth of the multiculturalism concept which was first introduced into Parliament in a speech by Senator Paul Yuzyk in 1964. It should be noted that in comparing the mother tongue with the population by ethnic group, the former is much lower for many groups. The multilingual press in many instances is bilingual with publications in the heritage language complemented by publications, a page or a section, in English. As a result, the multilingual press reaches the immigrant as well as those Canadian-born who have less facility with their ancestral language.

For example, the Greek newspaper, *Patrides*, regularly publishes an English section. The Ukrainian community has 24 newspapers and magazines of which 14 are in Ukrainian, eight in English and two bilingual, Ukrainian and English. English-language publications of multicultural groups complement the heritage-language publications and are integral to them. This fact is essential to the understanding of the total picture presented by the ethnic press in Canada. Generally speaking, the longer a group has been in Canada, the higher the percentage of publications in English.

The 1987 constitutional accord, popularly known as the Meech Lake accord, has taken the constitutional development a significant step forward with the inclusion of Quebec. In a country as large and diverse as Canada, it is essential in the interest of harmony and unity that all elements of the population be included in the Constitution.

The federation believes that our Constitution must reflect the reality of Canada in 1987 when it was proposed and today, of course, 1988. Yet one out of three Canadians has been virtually excluded from the accord. These are citizens of all origins other than Anglo-Celtic or French, such as the Chinese, Italian, German, Ukrainian, Polish and Greek, as well as the native peoples, the Indian and the Inuit. These eight million Canadians have been relegated to the end of the accord in section 16, which is absolutely inadequate and ignores the reality of this nation.

All Canadians must be included in sections 1 and 2 of the accord to recognize the overwhelming multicultural fact of Canada. How can one possibly ignore eight million Canadians or one third of all Canada? Surely the recognition of the French Canadians, or Quebec, in the first section as a distinct society, actually a distinct multicultural society, does not require the relegation of other Canadians to a second-class position. The accord must be an honest statement of Canadian reality today.

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By defining Quebec as a "distinct society," the accord seems to give one province special treatment which may diminish other rights guaranteed by the Canadian Charter of Rights and Freedoms. In particular, Canadian multiculturalism, which is the fundamental characteristic of our democracy and our society, as well as the rights of the native peoples and immigration matters, may be adversely affected.

It is clear that the federal government's authority will be diminished in areas such as immigration and the appointment of judges, which may create inequality in provinces across Canada.

In our opinion, it would create much inconsistency and inequality if every province were allowed control over immigration policy through the creation of 11 immigration departments. We strongly believe the accord should be amended to provide for only one immigration department in Ottawa to provide a consistent policy to benefit all Canada, and not regions or provinces separately.

Section 16: The accord is justly concerned with the protection of the two official languages, English and French, but provides inadequate protection for the original Canadian languages, the many Indian languages and Inuit, and for other third languages which have helped build Canada. Most serious, however, is the weakness of the accord on multiculturalism. This section, with its afterthought on multiculturalism, should be completely replaced by a revised section 1 or 2 containing a strong statement on Canada's fundamental character as a multicultural society.

We hope that this select committee on constitutional reform will strongly recommend to Premier Peterson that the Meech Lake accord should not be ratified without major revisions. The future of Ontario and of Canadian society depends on equality for all citizens and this should not be sacrificed to political expediency. The province of Ontario is a major element of Canadian society and our Premier should take a leadership role in proposing corrections to the draft version of the 1987 constitutional accord.

The Canadian Multilingual Press Federation would strongly urge the government of Ontario, therefore, to reconsider the implications of the accord in relation to the native peoples and to dispersal of immigration policy. Canada needs a single, consistent immigration policy administered centrally from the federal government and not from provincial capitals. We cannot afford to permit provinces to meddle in this area, as it affects all Canada and all Canadians and not just single provinces.

The most significant flaw in the accord, we feel, is the totally inadequate expression of multiculturalism in section 16. In order to reflect the reality of Canada's multicultural character, it must be incorporated into section 2 as the fundamental basis of Canada and Canadian society within which all our, in quotes, distinct societies, must function in equality because no Canadian should be treated as, in quotes, more equal.

The fabric of this society is multicultural. We are a nation of many cultures and races. We believe in a just society and equality. We believe that if one community or one racial group is placed in conflict with another, we could destroy the present harmony Canada enjoys. We cannot endanger or sacrifice basic elements of our society, as in the current form of the accord which neglects to face the issue of native peoples, multiculturalism and even women's rights adequately. We must protect the present balance of harmony for the future.

I would just like to add on my own behalf that there is a perception among many members of Parliament, MPPs and the public of Canada that the multilingual press is an immigrant press. This is true to some extent but in my own case, for example, I am a third-generation Canadian. My family was here in the 1890s. We opened up the prairies of Canada and the west. My mother was born in the Northwest Territories before there was a province of Alberta. It

would now be in the province of Alberta. Our family and many families that are of this third element or multicultural dimension of Canada have contributed to the building of Canada and we are an integral part of this nation.

I think it is unfortunate that the Meech Lake accord does not give due recognition to the reality of Canada today, which includes more than the two groups which are focused on in the accord. Thank you very much.

Mr. Breaugh: I appreciate your remarks today because you have put in a very succinct form what a number of people are pointing out is a problem here. The argument on the other side, at least that I have heard, essentially goes something like this: When we put in the Charter of Rights, we dealt with that matter. The Meech Lake accord dealt with a different set of problems and tried to deal with that.

The problem we are having is that it depends on whom you are talking to, which constitutional expert, whether there is any impact at all or a major impact, whether the placing of words in certain sections of the act means something really bad might happen or if it is stuck in another section it does not mean anything at all. There appears to be a need to clarify the situation.

Let me ask you what I have asked a number of other groups. If we were able to determine that nothing in this Meech Lake agreement violates what was established in the Charter of Rights and Freedoms, would that go at least some measure in diminishing your concerns about this agreement? If we could kind of solve that argument, would that solve some of your problems as well?

Mr. Gregorovich: The great difficulty we face, of course, is the fact that the courts of Canada are going to be determining that over the next century or more. We are now laying the foundation stones for the Canada of the next millenium, I suppose you could say. I think that if there is some way to be reassured that it does not jeopardize the Charter of Rights and Freedoms, that would certainly go some distance in allaying the fears many members of the multicultural communities have.

The perception is that having been put into the 16th clause or section, it is a secondary part of Canada, and yet that part of Canada a century from now is going to be the majority of the population of this country. Already, it does not reflect Canada because we are approximately one third of multicultural, one third of British and one third of French origin. Already, at this point, it is obvious that it does not reflect Canada. I think that in a sense you are preserving a notion of Canada which in fact today does not exist any longer. I think this is the fear our communities have.

Mr. Breaugh: Specifically, what a number of groups have suggested, and I am tending more and more to agree with it, is that at the very least what ought to be done here is that we ought to make a reference to the Supreme Court which says: "Is the Charter of Rights impacted by this accord at all? What is the relationship?" so that you get a nice clear, or as clear as you can from a court, decision which fundamentally would be a landmark decision.

That is what we have been told by the people who negotiated this agreement. Oddly enough, people are not taking politicians' words very readily these days. One way to get around that, or at least to attempt to address it, would be to get a reference put together and get that off to the Supreme Court. In practical terms, you could do that about as quickly as you could get

any amendment through 12 legislatures of different kinds, including Ontario's. That is one thing.

The other thing I want to pursue with you just a bit, and I confess that most of us probably did not know this either, is this matter of immigration: I was unaware that eight of the 10 provinces had immigration agreements with the federal government. We are beginning now to take a look at what those entail. On the face of it, it is ridiculous to say that there would be 10 or 11 immigration policies for Canada--that would certainly be untenable--or God forbid, 11 sets of bureaucrats let loose on that.

I do not have a real problem if the agreements are relatively straightforward in nature. It seems to me from the reports we have on them so far that they do seem to be pretty logical and address the needs of particular problems. In many parts of the country there is a shortage of physicians, so it seems to me they would be very anxious to sit down and enter into an agreement with the federal government to say, "If you have a bunch of doctors coming in, we could sure use some." Most of them seem to be of that nature.

If it turns out that our examination follows that pattern, do you still have your concern that they be allowed to enter into immigration agreements of any kind with the federal government, because that would be very hard to stop?

Mr. Gregorovich: No. I think the real fear is that the provinces will start creating provincial immigration policies which would affect whatever Ottawa is doing. I think any agreements with Ottawa, in themselves, would not present a problem because presumably Ottawa is going to co-ordinate whatever matters come to it from across the country relating to immigration. I think you are entirely correct on the point that there is no fear unless there is a possibility that some sort of independence of policy would be created in various provinces relating to immigration into the country.

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Mr. Breaugh: Frankly, my embarrassment was I did not know that eight of 10 provinces had these agreements. On looking at them, they look relatively harmless. The Quebec one is a little more substantive than the others, but still I cannot find very much that is objectionable there. Again, it goes back to what I said earlier, if the Charter of Rights stands above this, virtually all the concerns I have dissipate. They really diminish substantially.

Mr. Gregorovich: Could I just add a little point to this because it is relevant here. The federal government, of course, has had agreements previously with provinces, and with Ontario in fact. I do not know the date of it but it was around 1950. The Honourable John Yaremko, who was then a member of the government here, had pushed Ottawa to allow massive immigration of Italian immigrants into Ontario. That was the source, I gather, of the Italian community in Toronto, in Ontario, basically in Canada. It was through his pressure on the federal government. I think that is certainly to our benefit and that is the kind of thing I do not have any problems with, as long as Ottawa is in charge.

Mr. Breaugh: There are some of us who do not share your faith in Ottawa. One final point: being from Oshawa, I am a little boorish about these kinds of things. I must confess I do not get hung up about "distinct society" clauses. If somebody says to me, "Quebec is different from Ontario," I say,

"Yes, so what?" I do not know if it makes people in Quebec any happier or any different. Apparently it does. They all thought that was great.

What is there in this that makes people jittery or nervous? I take it that it is the sense, not that someone wrote the words "distinct society" into this agreement, but that later on somebody else would whip it off to court and that is where the dirty work would be done. Again, it seem to me if that old charter is clearly established as being supreme to this accord, or at least unshaken by this accord, most of your will join me in saying, "So what?" Am I correct?

Mr. Gregorovich: I think you are correct that we should have no fear of the words themselves, "distinct society." I think the idea of most individuals is that the implication is that if we are a distinct society, we are special, privileged. I guess the old phrase "founding nations" was used in a similar kind of concept. I think that is the danger, moving from "distinct society" to also providing privileges to a group that is a "distinct society." That is the only fear that is actually prevalent, although it is not actually spelled out that this is implied.

Mr. Saras: May I answer that? It is not the phrase "distinct society" itself; it is the decentralization it includes. It shows that there is a federation where the central government or the central power somehow leaves it open to this extent within Quebec. It is not only that we are concerned about a "distinct society" of francophones. The matter is what power the central agent, the central government is going to impose in order to make sure what the multilingual or multicultural communities within this "distinct society" are doing.

Mr. Breaugh: Let me pursue that for a minute. That is essentially one of the things I thought was a real concern, and I would like to pursue it a bit with you. I would have some concerns if I were a nonfrancophone in Quebec, that this clause by itself does not do me any harm, but if it gets into court with a subsequent government program, it may cause me some pain. It will not be the inclusion of this in the Meech Lake accord that causes me the problem initially. That is a recognition kind of thing and most of the argument is that it is in an interpretation section and all that kind of stuff, which I really do not understand.

But if I were a Ukrainian citizen in Montreal, I would be a little concerned that 10 years from now, somebody may go to court. I am arguing that I have some rights and the government in Quebec is saying, "No, you do not, and the reason you do not is that we have been called a 'distinct society' in the Canadian Constitution." Is that a summation of where your prime concern comes from?

Mr. Saras: I think the main objective is this one: The Prime Minister, when we brought this matter to his attention a few months ago, said, "At least, right now we have a constitutional accord. There should be more accords in the future. The Americans every year are having some changes in their Constitution," and so on. As to the nature, as it comes out of this accord, with the numbers of the provinces, there should somehow be agreement in order to implement some new changes or bring in a new clause. That makes sense, but this accord is not going to be changed by any means. If the government of Quebec tomorrow abolishes every other language so there no heritage language, nothing, nobody can do anything because it is within its own jurisdiction. Who is going to tell the government of Quebec what to do?

As Mr. Gregorovich said in his presentation, it is a matter of immigration. There are families in Quebec of Greek, Italian, Portuguese and Spanish origin, whatever. If as a certain policy tomorrow morning the government of Quebec decides that only francophones will enter this province, what is it going to be for those families? We are talking about unification of families and so on. What is going to be the future of these people?

Mr. Cordiano: Can I have a supplementary on that point? With respect to the "distinct society" clause and looking at the example that has been cited by my colleague, Mr. Breaugh, let us take it one step further in the context of what has been described by some of the legal experts who have come before our committee. They have said or hinted at the fact that what really constitutes a distinct society in Quebec is not only the French fact in Quebec, but also the other elements of Quebec society, the other ethnic groups, that in fact a distinct society like Quebec would include those other groups.

So when a court is looking at what constitutes Quebec's distinct society, it would by necessity have to include those other ethnic groups in its interpretation, and in fact section 27 of the charter would be upheld in the sense that it would have to be used as an interpretative clause, along with whatever else constitutes Quebec's distinct society. Of course, we are talking in vague terms here but certainly those elements are fundamental to Quebec's distinct society. That is some of the interpretation we have got from legal experts. Someone who lives in Quebec who is not from the French-speaking group or the English-speaking group would also constitute part of Quebec's distinct society. What is your feeling on that?

Mr. Gregorovich: I think the point is interesting because what you then suggest then is that we have, as the accord becomes law, groups that are the charter members of that distinct society, so if you had a new ethnic group come from somewhere in the world, it could not become a part of that distinct society. That is more or less what you are suggesting.

Mr. Cordiano: No.

Mr. Gregorovich: Those that are there now, everyone, would constitute the "distinct society," the French and all the other groups.

Mr. Cordiano: No. What I am saying and what has been said to us is that indeed you have more than one or two ethnic groups. Therefore, regardless of the number, you have, if you want, a pluralism of groups and a multicultural configuration in Quebec along with the rest of the country, so that section 27, referring to multiculturalism, would come into play on that kind of interpretation.

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Mr. Saras: Then why do we need that distinct society? If the face of the whole country is similar with that of Quebec, you do not need to specify only Quebec as a distinct society. Canadian society as a whole is distinct. It is a multicultural society. It is something that has been recognized, even by the Constitution in its original form. So why this change? The moment you bring Quebec as something different from the rest of the country, that means you recognize that it enjoys a special status.

Mr. Cordiano: It has been suggested that in fact Quebec was not

recognized to this point in our Constitution and that there was no reality for Quebec in the Constitution.

Mr. Sarag: Yes. All right. That is OK, but by the time the bureaucratic procedure is finished, it is going to be accepted as it is today on the accord.

Also, if you try to challenge those words "distinct society" in the court, it is going to be left to the interpretation of the judge and of course the judge is either going to accept whatever has been stated strictly on the accord, the letter of the clause, or is going to accept the silence of the clause. It is up to his interpretation. If the judge is going to accept that the letter of the clause means only francophones are the distinct society, who is going to challenge that interpretation? If the judge accepts the silence of the lawmakers, he will accept that "distinct society" refers only to francophones.

Who is going to challenge that? You cannot do anything today or even in 10 or 20 years. It is the interpretation of the law. It is how the judge is going to take it.

Mr. Cordiano: I grant you that there is a lot of interpretation here. I am sorry, Mr. Breaugh, that this supplementary is running on but I have just one last observation here.

In fact, the very essence of the Charter of Rights necessitates that we have the highest court of the land looking at some of these issues when individuals in our society basically have conflicting viewpoints. The charter, by the fact that it is in the Constitution now, will create situations like that, because there are limitations on individuals' rights and freedoms. What you or I might consider our rights as an individual may infringe on someone else's rights and therefore we have to go to court. We have to have a Supreme Court that will somehow interpret what is a fundamental right and what is bestowed as an individual right as opposed to someone else's individual right. By necessity, we are going to have these difficulties where there is a role to be played by the judicial element of our government.

Mr. Sarag: There are two things to consider here. When we are referring to the Constitution, we are referring to the highest law of the land. No one can challenge the Constitution unless you have a reform, a new accord later on, or you have a revolution. There is no way you can challenge the Constitution of the country in any court. You can change the Constitution in only two ways: either by sitting down and having a new accord the way this one has been placed or you have a revolution.

Mr. Cordiano: You do not challenge the Constitution; you challenge--

The Vice-Chairman: Are you finished with your supplementary?

Interjection.

Mr. Breaugh: Mr. Offer wants to start some trouble.

The Vice-Chairman: Would you please finish your questioning. There are two others before Mr. Offer has a chance to make his comments.

Mr. Breaugh: At the centre of the most controversial part of this is that you have to make a judgement call. Do you want Quebec to accept the Meech

Lake accord and become, not in a legal sense but I suppose in a moral, political and societal sense, part of the Canadian Constitution? Does that give you more rights and freedoms than if they are excluded? I guess that is the basic call we have to make.

I will make a comment and I would like to get just a little of your reflection on it. I would be much more worried if this were 50 years ago and you were talking about a Canadian Constitution that said the province of Quebec was a distinct society, because 50 or 100 years ago in Quebec that would really mean you were talking of Quebec being very distinctive, very Catholic, very French, very French-Canadian. If I were a Ukrainian immigrant living in Montreal, I would get real worried, because you are talking about a very clearly distinct society--rigid, almost.

In modern Quebec, that is not true. I am not even sure that if you were describing modern Quebec you could use a word like "Catholic" except in the broadest and certainly nonreligious sense of the word. So Quebec is much like Ontario. There are some things that are distinctive about it. They make bagels in a different way. They have a distinctive language and culture of their own. There are people who are famous rock stars in Quebec whom we have not heard of. All kinds of things make them distinctive, but in a way which would do me harm, it is hard for me to come up with them any more.

I would like to get your reflection on that and on the judgement call. Do we opt for the accord, warts and all, if we try, for example, to establish the supremacy of the charter by means of a court reference or something like that, or is the accord a nonstarter under any conditions, for you?

Mr. Gregorovich: I think the accord, as I mentioned at the beginning, is a foundation stone for the future and I would like to see it a solid foundation stone, not a flawed one. At this point, I would like to see the correction at least to the extent that the multicultural aspect were properly recognized in it.

If that sacrifices the adherence of Quebec to the accord, I do not know. That would be like the child who cannot play with the marbles and will not let anybody else play with them, but I think this is very important for Canada as a whole and I would hope that the Quebec society would realize that this is also significant to us. It is important for them, but it is also significant for the rest of Canada. That is my own reaction to that particular aspect.

Mr. Saras: We do believe, as Canadians, we have one of the most modern constitutions in the world. It is the most recent Constitution we have established and this Constitution, I do believe, is going to last at least 50 or 60 years from today. Although the Prime Minister suggested annual changes may be made, the way things are going I do not think any changes will be made for at least 50 or 60 years from today. This is going to be because of the changes in society and, later on in that period of time, whoever is in power is going to understand if the federation is still alive with this accord of a distinct society and so on. They are going to find out that it is not workable any more and then they are going to sit down and try to make changes.

Our concerns are what we are going to face over that period of 50 or 60 years, what the future of multiculturalism is. We have an act in Ottawa about multiculturalism. We do not know anything from Ontario. We did not hear anything from Quebec. Nobody knows what is going to be in British Columbia.

All those things are of main concern. There are inequalities around. You

can go anywhere and you can ask anybody. If you call to complain of something to the bureaucrats, everyone depends on the written law, on our Constitution. If our Constitution excludes something specifically, nobody pays attention to you because this is out of the law. There is nothing in the law about your own rights or about your complaints, so nobody pays any attention. Everything is perfectly legal.

1550

So, when you are talking right now, as Mr. Gregorovich says, about the fundamentals of this country, we would like to know that at least the aboriginal people of this country are happy, as well as those who are contributing and who are neither of French or English origin.

I do believe that members of my community are contributing in the building of this nation. There are senators and MPs. We do not have MPPs yet, but I hope next time we will. We want to know that our contribution is recognized as part of the mosaic and that is it. If we are going to pass this accord as it is today and we accept it, nothing can be done in the next 50 years. This is the reality as it comes out of the letter of the accord.

All the premiers can sit down every year and discuss it. It is going to be whatever another Prime Minister of this country said a couple of years before, that we are going to negotiate fisheries, human rights and so on. That simply cannot be done. It did not work in the past. It is not going to work in the future. Every one of the premiers every time he is going to sit at the table, he is going to get the best out of whatever he can from this agreement. Therefore, there is nothing that can say we will accept the accord and one year or two years later you have another change.

Mrs. Fawcett: I hesitate to belabour this point on distinct society, but I certainly agree with my colleague Mr. Breaugh in that I see certainly the face of Quebec has changed and I cannot see it reverting. I think it will stay multicultural.

Earlier on in the hearings I asked one of the experts and I also asked some of the others the same question privately: What if that line that Quebec is a distinct society had read, "Quebec, too, is a distinct society within the multicultural nation"?

Mr. Saras: Yes. This is perfectly acceptable because it gives the exact same recognition to every province. "Quebec too." That means Ontario is a distinct society, Manitoba is a distinct society, so Quebec too is a distinct society. That makes it clear. It makes sense.

Mrs. Fawcett: Thank you very much.

Mr. Elliot: I would thank you too, Mr. Gregorovich, for your excellent presentation. We have been talking to a large number of people and your press group actually filled in the blanks with respect to the native peoples and some of the other groups that we have been talking to. There is a very consistent approach in that the present agreement or accord that has been signed is flawed and it would be preferable if it could be changed a bit before its implementation, for obvious reasons.

In the light of that, up until September 10, when I came here to sit in the Legislature, I taught mathematics at the secondary school level for 28 years and I just automatically start reading figures from an analysis point of

view. There are some clarification comments I would like to make with respect to the data here because, on the one hand, the one third or the eight million Canadians that you represent is a very impressive statistic and I suspect it is absolutely correct, but in the record you have given us in your presentation today on page 2, the groups that have English or French as their mother language add up to over 21 million, or 87 per cent, which leaves just 13 per cent for all of the other groups.

Unless there has been a substantial change in those statistics since the census in 1981, jumping from that 13 per cent up to between 31 per cent and 32 per cent leaves some doubt in my mind as a statistical sort of thing that there is something there I do not understand. It might be the one point you made with respect to people like you and me who are third-generation and fourth-generation Canadians who subscribe to the publications and in a census might say our mother tongue is English, but in fact it was not because of our particular backgrounds.

I would appreciate it if you would clarify those data for me so that there is some sort of reconciliation of those figures on the record, because the way I read it I think is how it would be read by other people looking at the data. That would be unfortunate, because I think you do more realistically represent close to one third of the population, not what is shown on page 2.

Mr. Gregorovich: This is a complication that arises from the fact that only a certain percentage of the population, which is of various origins, speaks or has spoken their mother tongue. So actually, it is exactly what you said, that the mother tongue of the bulk of the Canadian population is English and French. The eight million, of course, does represent the many groups according to their ancestry and heritage but not necessarily their facility in a third language. The mother tongue represents the language aspect, but there is the aspect of your ancestry and you do not necessarily lose your ancestry because you have lost your language. The Irish are still very Irish although they speak English. So that is really the basis.

Mr. Breaugh: Please. I take that as a great insult.

The Vice-Chairman: A certain kind of English.

Mr. Gregorovich: I think that is what the contradiction is between the question of ancestry and the question of mother tongue. The difference is what you have noticed.

Mr. Elliot: That is all I wanted to clarify, because I thought if that was not written into the record--this document will be part of the record, so other people may be asking about it down the line.

Mr. Offer: I really had a supplementary to Mr. Breaugh's question; it is just that I forgot what it was. It came out of one of your responses to a question with respect to a concern you have on account of these immigration type of agreements that might be instituted in your example, and you use Quebec.

What we are finding out is that the whole question of naturalization and aliens is a federal matter. The question of immigration is a shared matter between the federal and provincial governments. Notwithstanding the fact that it is shared, there is in the Constitution an acknowledgement that it should not be repugnant to federal law. I think your response was dealing with the concern that you and those you represent have with respect to the particular

agreements that may be negotiated between the federal government and the province.

Do you get no consolation from the fact that the Langevin agreement indicates that these agreements shall also not be repugnant to any provision of the act of Parliament of Canada or to the feds who set national standards and objectives? I am wondering why you do not say, "Yes, that is a concern"--to your mind, a valid concern--"but at least we now have in the Langevin agreement that whatever the agreements call for shall not be repugnant to federal law with respect to the setting of national standards, objectives and things of this nature."

I am wondering why you do not take some consolation to that effect, because it is not a matter of interpretation, which we were dealing with in the "distinct society" matter. This is a matter that is down and has been down for a number of years.

1600

Mr. Saras: I would like to tell you that our law is based on a tradition as it developed over the years and whatever interpretation the letter of the law prefers.

For whatever reason, because the federal government wants to have good relations with the Quebec government over a period of time or because it wants to get some sort of votes over the next 10 years, if it gives the right to the government of Quebec somehow to manage the inflow of immigration into the province, this is going to make later a so-called tradition, and I do not think that any judge will accept that this is not part of the constitutional process.

When we recognize the right of someone to do something for a period of 20 years, if after 20 years you try to challenge his right to behave that way in the courts, the courts will recognize his right to continue doing whatever he was doing over that period of 20 years when you did not say anything.

Mr. Offer: I understand what you are saying. This agreement does now give the right to all provinces to enter into a grievance with the federal government with respect to matters of immigration. We have heard that in some way, shape or form there are such agreements already in existence. Some deal in a greater complexity in others, but the fact is that for most of the provinces these agreements are now in existence.

Your concern, I must say, concerns me greatly because I see that over all these agreements, standing above all these agreements is the fact that the terms of the agreement shall not be repugnant to any national standards and objectives. We are not talking about the new right of the province to enter into an agreement with the federal agreement that is part of the Langevin agreement, but what we are saying is, notwithstanding that which we are talking about, that is still above everything.

The reason I want to bring that out is because of your concern that over 20 years something which is wrong becomes a right. I am saying that right from day one, we have this very clear safeguard. We are not talking about something like the distinct society. We are not talking about a rights provision as opposed to an interpretative provision. It is something which we are talking about that is very clear, very much there now, very much has been there before and very much will have to be there to meet the concerns you have clearly brought forward.

Mr. Saras: Whatever you say today here is highly hypothetical. We try to give our best interpretation of a piece of legislation. Whatever I say represents my own views, how I interpret those clauses. I will accept your statement this way, that it is highly hypothetical. No one knows what the living conditions are going to be and how the reality is going to make the interpretation and the implementation of those clauses. Nobody knows what Canada is going to face next year or two years from today.

We are talking about free trade. Nobody knows what free trade means, in fact. Some of us are expecting that we sell to the United States; some of us believe we buy from the United States. Life is going to show if we are right, or you are right and we are wrong. At least, right now, we do have something in front of us. We have a piece of legislation and we try to interpret those clauses and to explain to you our concerns, deliver to you our concerns. We ask you, "Please, before you go and turn that piece into a living entity of the country, take a look at this matter." You cannot ignore whatever the aboriginal people are claiming. You have to take their concerns into consideration. You have to take the Northwest Territories into consideration.

With regard to immigration, Manitoba, as Mr. Gregorovich said--as I heard at least--the original language of the province was Ukrainian; today it is English. No one in the accord refers to the fact that the first official language in Manitoba was Ukrainian because 90 per cent of the population were of Ukrainian origin. Over a period of time, the living conditions, the Canadian reality, has silently changed this fact. Today it is English, and no one speaks about the Ukrainian language or Ukrainian rights.

Mr. Offer: I understand the concern you have with respect to this agreement. The point I am trying to make is that these agreements are not without limitation. Those limitations and those checks are in the agreement right now. I just wanted to try to share that with you with respect to this agreement. I do appreciate your thoughts on this.

Mr. Saras: As I said before, it is a matter of interpretation of the courts, because you have the Constitution, which is the basic element of this state. Nobody can challenge, you know, except, if it were only the national Parliament responsible--there are many states in European constitutions.

For example, I will refer to the Greek Constitution. It says that by vote of three quarters of the members of Parliament, they can call a new committee to amend the Constitution, three quarters of the total number of the members of Parliament. Here, you do not have something like that; here you have the national Parliament, plus an agreement of a certain number of premiers. Political reality proves that it is going to be very, very tough and difficult to have those changes.

The Prime Minister said a couple of months ago, when we brought those perceptions to his attention: "Why do you do that? Accept it as it is; at least we have Quebec right now; at least we have a country right now. Let's make amendments every year. Look at the United States." Yes, but the Canadian state is not the same institution as the United States. They have a different way of amending their laws, even their Constitution; it is not as difficult as it proves to be here within the Meech Lake Accord.

Mr. Cordiano: I would like to briefly explore section 27 with you as it regards the charter. Let us look at section 27. In the light of the fact that this was part of the Constitution Act of 1982, it is in the charter. Section 27, as all legal experts have indicated, is an interpretative clause.

It does not grant rights to individuals, and it says very clearly in the language used that: "This charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

Assuming that, I then look at section 15, which is a rights-granting clause: "15(1) Every individual is equal" and cannot be discriminated against on the basis of "race, national or ethnic origin." That grants a right, so we are talking about discrimination.

Mr. Saras: Yes.

1610

Mr. Cordiano: And you use ethnicity as one of the elements on which you might consider the basis for arguing one way or the other on discrimination. I look at that and then I look at another section of the Charter which refers to the official languages of Canada, section 16, a reaffirmation of the two languages, bilingualism. So I am looking at now the Meech Lake accord and it speaks to the recognition in section 2 right off the bat, of the existence of French-speaking Canadians and English-speaking Canadians in Quebec and outside of Quebec. The language goes on to say this: "French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada."

I posed this question to other legal experts, the question about fundamental characteristic. The language implies that there are a number of fundamental characteristics in this country and that, indeed, this speaks to one, a fundamental characteristic of the country, that is, French speaking and English speaking, and that there are other fundamental characteristics. What this implies is that another fundamental characteristic is indeed the multicultural aspect of our country.

I see what you are saying in your brief, that you would like a very clear, unequivocal statement in section 1 or section 2 of the Constitution pointing out that Canada is indeed a multicultural society and that constitutes a fundamental characteristic of this country. I can sympathize with that.

What I am sort of baffled with and what I have to contend with, is the fact that section 16 only brings multiculturalism into the Meech Lake accord--referring back to section 27--but at the time that this Constitution Act was proclaimed in 1982, section 27, referring back to multicultural heritage, was only an interpretative clause. What I think I am hearing from you is that as an evolution from that, as an evolutionary process, that is probably not enough. Am I correct to assume that?

Mr. Gregorovich: Yes, I think you are absolutely correct in that.

Mr. Cordiano: And that you are looking for additional strengthening of that notion of multiculturalism, that--

Mr. Saras: Yes.

Mr. Cordiano: --putting some teeth into it.

Mr. Saras: Yes.

Mr. Cordiano: And you really have not spoken to that in here, because as we sort through all the legal opinions, this section 2 of Meech Lake is an interpretative clause with respect to distinct society. That is what legal experts are telling us. We have to sort through that maze, as I say. But if we have a number of interpretative clauses and each one of them is balancing the other, that is they are of equal status, I cannot see, for myself anyway and my personal opinion, how anything in Meech Lake would derogate from the the Charter of Rights and Freedoms in the Constitution Act. So I am left with the feeling that in fact in 1982 you were not satisfied with section 27, that section 27 in fact--and you referred to what was done in Meech Lake by section 16 as an afterthought. But it seems to me that section 27 was sort of an afterthought in the Charter of Rights and Freedoms, because it is only an interpretative clause. Somehow it does not all come together.

Mr. Saras: At this point, let me tell you that it was much easier for the Constitution to be amended as it was in 1982. It makes much more complicated that way as it comes out from the Meech Lake agreement. This is a very basic element. In 1982, everyone could expect that amendments would be done every two, three or five years, the way things were settled at that time. Accordingly today, things are much more complicated.

Another thing is you are referring to section 16 and you are referring to the Charter of Rights. If you have the Charter of Rights that guarantees the right of every Canadian, either French, English, Greek, Ukrainian, then why are you coming down to accept that the Quebec society is a "distinct society?" What is the logic behind this? If you have something, a charter, and this has been included in your constitution, the highest law of the land cannot be changed by decree of any government, but only by parliamentary procedure. Why do you have to give a special status to someone who already has that status? The Charter of Rights is there. It covers the rights.

If you do that in good faith and then try to interpret this matter, if the government of Quebec has some thoughts about its own future, then why should we not have consensus about our own future, about the future of this land?

Mr. Cordiano: What I am trying to get at though is how this will affect individual's rights, how by saying, "Well, I will try and grapple with this"--

Mr. Saras: There are many ways.

Mr. Cordiano: --how this will affect someone's rights as an individual. If you believe, as some witnesses have stated before us, that the Charter of Rights may be eclipsed, may be derogated from by provisions in the Meech Lake accord, well then you have an argument as far as I am concerned. But if that is not the case, which most of the legal experts who have come before us--at least in the way I am reading it to this point--and they agree that the Charter of Rights is not overridden by the Meech Lake accord, that the Charter of Rights is fundamental and basic because it grants rights to individuals, whereas these clauses in the Meech Lake accord are, for the most part--many of them--interpretative clauses. Now there are changes with respect to the unanimity clauses--and you have spoken to that--changes with respect to the Senate and the judiciary. But with respect to culture, with respect to languages as contained within the Charter of Rights and Freedoms, if you are looking at that, then these rights in the charter are supreme. If you believe in that notion, if you believe that the legal experts are correct--

Mr. Saras: Mr. Cordiano, if you go to the St. Lawrence, you are

going to find many of the businesses in the area are keeping the business in the Italian language. If you go to Danforth Avenue, you are going to find out that even some streets are carrying names with Greek letters and the Greek alphabet and Greek names. Can you show me one street in Montreal that I can see a Greek or even an English sign?

Mr. Cordiano: OK. That is what I am getting at. The whole language question in Quebec, I believe, is outside of this. I do not want to get into that because it complicates the kinds of things that we could--

We could possibly do that, but I will be cut off by the chair.

The Vice-Chairman: Very quickly.

Mr. Breaugh: Which would be a good idea.

The Vice-Chairman: Yes.

Mr. Cordiano: Which is probably a good idea, yes. But just a final comment. I think that you are saying that there are no language rights other than French and English. I would have to agree with you. There are none in this Constitution, in any of the changes. There is none. It is not in the Charter of Rights, it is not in the Constitution Act, and it is certainly not in the Meech Lake accord. So I would agree with you. But that is another issue that we will discuss on another day.

Mr. Saras: It is a matter of culture. Every culture is doing her best to retain the best. After all, this country has a culture in the making. We are making the culture. This country is even 200 years old. So we are making the culture. Every community is doing its best to give the best of its own culture in order to build Canada.

I think that under the clause of the Meech Lake accord, there are going to be some oppressed always and some of us will feel very bad.

The Vice-Chairman: Thank you very much gentlemen for your comments and for your excellent presentation and for your frank answers to the questions that were put to you by the members of the committee. Your comments will be taken under consideration and I am sure be thought over many times before we come to any conclusions.

Again, I wish to thank you on behalf of the committee for coming and appreciate the time and energy you spent.

Mr. Gregorovich: Madam Chair, I wonder if I could, on behalf of the federation, present you with the history of the Canadian Multilingual Press Federation, published in Toronto three years ago, titled Twenty Five Years of Canada Ethnic Press Federation. That was the name of the organization.

The Vice-Chairman: Thank you very much sir. That will be very helpful for us to review. Thank you.

This meeting stands adjourned until tomorrow morning at 10 o'clock. Room 151.

The committee adjourned at 4:21 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, FEBRUARY 23, 1988

Morning Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

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Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From the Federation of Women Teachers' Associations of Ontario:

Cline, Elaine, President

Hill, Ada, Executive Assistant

Penfold, Helen, First Vice-President

From Persons United for Self-Help in Ontario:

McPherson, Cathy, Co-ordinator

Southern, John

Beatty, Harry, Legal Counsel

From the Junior League of Toronto:

Moxon, Sharon, President

Perry, Romily, Public Affairs Chairperson

From the Legislative Assembly of the Yukon:

Phelps, Willard L., Leader of the Official Opposition; MLA for Hootalinqua

LEGISLATIVE ASSEMBLY OF ONTARIO
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Tuesday, February 23, 1988

The committee met at 10:08 a.m. in room 151.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good morning, ladies and gentlemen. If we can begin the Tuesday presentations, I wonder if I might ask the representatives from the Federation of Women Teachers' Associations of Ontario to come forward: Elaine Cline, president; Helen Penfold, first vice-president; and Ada Hill, executive assistant. We have received a copy of your submission for which we thank you. We appreciate your coming in this morning and meeting with us. I think I will simply turn the microphone over to you and following your presentation we will pose some questions.

FEDERATION OF WOMEN TEACHERS'
ASSOCIATIONS OF ONTARIO

Ms. Cline: Good morning, Mr. Chairperson and committee members. As indicated, my name is Elaine Cline and I am the president of the Federation of Women Teachers' Associations of Ontario. To my right is the first vice-president, Helen Penfold, and to my left the executive assistant, Ada Hill.

The Federation of Women Teachers' Associations of Ontario is the professional association that represents 32,000 women teachers in the public elementary schools of Ontario. In 1988, FWTAO will celebrate its 70th anniversary. This organization indeed has a proud history as an advocate for women's equality, both in education and in society as a whole. Our effectiveness has been measured federally with the campaign for the inclusion of equality rights in the Canadian Charter of Rights and Freedoms.

We appear today to make serious recommendations to this committee about amending the Meech Lake accord, despite the fact that the Premier (Mr. Peterson) has already stated publicly that he is unprepared to consider amendments. We want to go on record in support of the concept of a united Canada in which Quebec is a full participant. We do not oppose the Meech Lake accord out of bias against Quebec. However, we believe that the solution to one problem should not create others.

On the issue of women's equality rights, some of the most expert constitutional lawyers have advised us and other women's groups that the equality guarantees stated in sections 15 and 28 of the Canadian Charter of Rights and Freedoms would be affected by the "distinct society" provisions of the Meech Lake accord. At the same time, we have assurances from some politicians that this was never the intent. If this was not the intent, then we are asking that clear, unequivocal language be included in the accord to provide a legal basis to make the intent crystal clear.

Further, legal experts have differing opinions about a possible hierarchy of rights being created by the references in section 16 to multicultural and to aboriginal rights. If, as we have been assured, that is

not intended, then it ought to be a simple matter to include references to sections 15 and 28 to clarify that.

We do not accept the suggestion that any amendment to the Meech Lake accord will tear it apart completely. If that were the case, why would the whole system of hearings have been set up at all? We believe this committee has a worthy and important role to play in ensuring that these hearings are meaningful and do result in changes.

In speaking to the federal and provincial powers, we join with those who are concerned about the veto power provided to the provinces and the federal government on constitutional matters. We endorse the concerns expressed by those who fear that Senate reform will be virtually impossible and sympathize with the territories' claim that their quest for provincial status has been made more difficult. We also ask the committee to recommend the deletion of the rights of the provinces to nominate senators since it is likely that such nominations could move this country towards further decentralization rather than what we see as a necessary greater cohesion.

In the area of national shared-cost programs, we are concerned about the continuation of social programs that have been the pride of this country for generations. The imprecise language found in section 7 of the accord, which does not clarify "reasonable compensation" and "exclusive provincial jurisdiction" or what "compatible with the national objectives" means, leaves us, and in fact leaves many others, unsure of what this opting-out provision really means.

After lengthy and costly national study, we have now reached some agreement on a federal child care policy. What strength would there be to a child care program if the provinces were able to opt out? That is a question that must be asked. We must have clear language and definitions in this provision to ensure accessibility, to ensure quality and to ensure universality and comprehensiveness.

Regarding amendments, we are most concerned about the accord's outline of annual gatherings of the Prime Minister and the 10 premiers to amend the Constitution. This process, unhappily, leaves out representatives of many groups: women, native peoples and other minorities. Is it reasonable to suggest that every year our Constitution is likely to be amended? Can we expect that those 11 men will meet behind closed doors once a year and decide the fate of the entire country and then ask us what we think only after the fact? Will we be told annually that a deal has been struck which is so fragile that it cannot survive basic amendments? What a sad picture for the concerned citizens of Canada.

This process is antidemocratic. We are surprised that the average citizens of Canada are not more outraged. However, the members of this committee are not just average citizens. Therefore, we urge you to recommend amendments to the Meech Lake accord and to insist that in the future no constitutional amendment be agreed to without advance notice of what is under discussion, without opportunity for the people to be heard and certainly not without time for a thorough debate in Parliament and the provincial legislatures.

We share the desire that Quebec be a full partner in the Constitution, but we deplore the means and the process used to procure agreement. We are incensed by the absence of women in the constitution-making process. We should not be relegated to the position of petitioners after the decisions have been

made. We are tired of winning battles and then having to fight them all over again when our victories are undermined by deals made when we are not there.

Finally, we do not trust the platitudinous and patronizing reassurances of politicians. We want guarantees in writing in the accord so that the rights given in the charter and elsewhere are not taken away by private deals among first ministers.

We have recommendations to put before you and I will read them.

First of all, the Constitution amendment, 1987, should be amended to guarantee equality rights, either by adding to section 16 of the Constitution amendment sections 15 and 28 of the Canadian Charter of Rights and Freedoms or by deleting section 16 and adding a clause to provide that the charter prevails over the 1987 amendment.

As a second recommendation, the Constitution amendment, 1987, should be amended to remove the vagueness and the imprecision of section 7 so that terms such as "national objectives" and "shared-cost programs" are defined and that standards are both defined and required in the shared-cost programs.

Third, the Constitution amendment, 1987, should be amended to delete the right of provinces to nominate senators so that real reform of the Senate may proceed.

Fourth, the amending formula proposed in the Constitution amendment, 1987, should be reconsidered in view of the inevitable rigidity produced by the requirement of unanimity among the federal and provincial governments.

Fifth, this committee should recommend that there be a free vote in the Ontario Legislature on the 1987 constitutional accord.

The Federation of Women Teachers' Associations is pleased to have had this opportunity to speak on our concerns regarding the Meech Lake accord. We certainly welcome any questions you might have.

Mr. Chairman: Thank you very much for your presentation and thank you for the specific recommendations as well, which may help us to focus some of the questioning this morning. The first question, Mr. Eves.

1020

Mr. Eves: I could not have said it better myself. Many of the points your federation is making here today are points I and some of my colleagues have been making repeatedly throughout the hearings. I think a lot of them are very well and succinctly put. You are to be congratulated for putting them as succinctly as you have.

On your first recommendation with respect to equality rights and guarantee of the same, I quite agree there is at least an element of uncertainty with respect to equality rights and whether they are protected or not protected by the Meech Lake accord. I prefer personally--this idea was posed by Professor Baines when she was one of the first delegations that appeared before us--that perhaps the best way to deal with this is your second point, by deleting section 16 and adding a clause to provide that the charter prevails over the 1987 amendment. I feel that in that way there can be no ambiguity and everybody's rights under the Charter of Rights and Freedoms are

protected. Can I have your comment on that? You obviously agree with that. Would you think that is a better route to proceed than the former?

Ms. Hill: We have left both of the options as part of our presentation because we have heard different views from different lawyers and I am sure you have as well.

Mr. Eves: How they do confuse things, those lawyers.

Ms. Hill: One of the things we would like to be sure would happen as a result of the consideration of ensuring that women's equality rights would override any other statements in the accord would be that a very careful analysis by legal authorities be done about which of the two would be the best route.

Mr. Eves: Thank you. I would like you to expand, if you would, on number three. I think it is a rather novel suggestion that the right of provinces to nominate senators be deleted so that real reform of the Senate may proceed. Could somebody expound on that a little bit, please?

Ms. Hill: As to this comment, one of the things that is included in more detail in the brief itself on page 6 is a concern related to the fact that the balance of power between federal government and provincial government has been fluctuating back and forth over time. One of the things that some people may suspect could happen or may wonder whether it could happen would be that when provinces nominate senators, the senators thus selected would carry that particular province's point of view around issues of whether federal government powers should be enhanced or whether provincial government powers should be enhanced. That will contribute further to decentralization rather than to a more cohesive view of the country.

Ms. Cline: It is a shift of power that we see as not necessary. We must be seen as a more cohesive group, a nation, rather than what would be perceived not only by ourselves but also by other nations.

Mr. Eves: One group that I think has certainly been left out in the cold, so to speak, in this whole process is the aboriginal peoples of Canada. They were before us last week; many groups and spokespeople for them were before this committee last week. Undoubtedly, we will hear from more in the weeks to come. They were suggesting that what at the very least could have happened--they were quite offended by the fact that the two items put on the agenda for the next round of constitutional talks are Senate reform and fisheries, yet Canada's original people and their rights and their fight for self-government were not even recognized. They would be happy if they were included in those agenda items listed. I think they should be first on the agenda list. Would you agree or disagree with that?

Ms. Cline: I would certainly agree with that. If they are not even making it to the agenda, it speaks about where we are at in terms of their rights under the Constitution.

Mr. Eves: Thank you.

Mr. Allen: I appreciate the Federation of Women Teachers' Associations of Ontario coming before us. You are no strangers to legislative committees. I think that is fairly obvious in the way you have put your brief together and presented it with assurance and coherence of argument. It is obvious that you are wrestling with the same questions that we are wrestling

with, trying to get light where there seems to be disagreement and settle our own minds as to where one goes with respect to those points where there is difficulty.

Are you concerned with respect to your first proposed recommendation that equality rights be guaranteed, that even though you might secure a charter override, the charter itself has got clauses within it which make it possible for even the equality sections to be overridden? I am thinking of section 1 which says, whatever may be "reasonable limits in a free and democratic society" may politically take precedence over the specific terms of any given item in it.

I wonder whether in the light of having just simply a statement of the charter's override of the Meech Lake accord really accomplishes your objective. Can you ever get that watertight guarantee that you appear to be looking for?

Ms. Hill: I think that is why we have not really come down saying one or other way to make the amendment. Section 28 of the charter is the most crucial one and it is one that we fought for along with thousands of other women in this country to ensure that it was in the original charter. It says notwithstanding anything else in this, the rights of male and female persons shall be predominant, so that there may be some merit in actually making the statement and the reference to sections 15 and 28.

Mr. Allen: In other words, you are not assured by those constitutional experts who say that the charter is always fully and equally present to other aspects of the constitution, whether provisions passed in 1867 or provisions present or future, such as may be written or drafted by constitutional conferences.

Ms. Hill: I think that is what is under debate at the moment.

Mr. Allen: Yes. I am trying to find out whether you have come down really quite firmly and clearly in your own minds on that because that is something, obviously, the members of this committee have to come to a conclusion about after we have heard people like yourselves. It would be nice for us to get a sense as to whether people concerned about specific areas, such as you are, have come to a clear conclusion in their own minds about that kind of observation regarding the interpretation of the place of the charter.

I gather you are a bit suspicious about that. I am sort of gathering that, but I am not just sure how much that qualifies your final conclusion as to what your recommend.

Ms. Hill: None of us is a constitutional expert.

Mr. Allen: Join the crowd.

Ms. Hill: What we have done is to glean the advice from the experts that we have heard from, and what we understand is that there is ambiguity. Our message is, there should be no ambiguity, that whatever wording is necessary to be included to make it crystal clear that equality rights that were and still are contained in section 28, particularly, of the Canadian Charter of Rights and Freedoms override anything else that may happen in the way of amendments to the Constitution.

I am sure you have heard all the discussions about the hierarchy of

rights. If you say that there are particular references to multicultural rights, certain rights or the "distinct society" rights that could create a tangle of possibilities which then would need to be fought out in a court.

We suggest that, for something as crucial as the charter of our country, it should be clear at the beginning, and we think that is possible.

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Mr. Allen: My sense would be that even if you said that the charter overrode, then you might still, none the less, have internal conflict between multicultural rights, aboriginal rights, women's rights and so on, simply because separate sections are all there side by side. One can imagine, I would think, as easily a conflict between multicultural rights and women's rights as one could between distinct society and multicultural rights and women's rights.

My problem is, if you simply reaffirm the charter, I am not quite clear in my own mind what has been gained. I agree that if it does not hurt anything to do so and if you have not lost anything in the process, I am not opposed to doing it. I guess I would like to be a little more certain about what was gained by accomplishing that and whether one really would overcome some of those internal problems that, I think, in our system normally get worked out over time as case by case comes before courts and one simply resolves them in practise.

Do you see the question I am posing, that the charter itself has got the same problem that you are trying to address by making the charter override?

Ms. Hill: A part of the problem in this circumstance is that the provisions of sections 15 and 28 have only been in place for a couple of years, so it seems a little premature to begin tinkering with those when we scarcely have any precedent cases to use as models for the influence of those two. If, as some constitutional lawyers have suggested, a hierarchy of rights is implied by picking out a few from the cluster that are stated in section 15, then it ought at least to be reasonable to say that we did not intend to do that, and as some politicians have said, "that is not binding on the courts."

What would be binding on the courts would be to say that those have not been picked out particularly but that the provisions of sections 15 and 28 are in place in this Meech Lake accord, as they have been so far in the provisions of the Charter of Rights in the Constitution.

Mr. Allen: I gather you are not exactly happy with the Premier's rejection of the court reference around this kind of question, as one way of resolving the problem.

Ms. Hill: I do not know that we would object to that kind of reference to determine the applicability. I think that kind of reference around the equality rights would only address one small part of the problem that many different groups have with the other aspects, only some of which we have addressed in this brief as well.

That would not deal with the whole issue of having Brian and the boys get together to discuss constitutional reform every year. It would not address the difficulties of the imprecise wording in section 7, so that would simply take one small part of the whole accord off to the court. Of course, that would probably leave this committee in a position of being in limbo for making

its own recommendations or taking any action that this province could take while it waited for the courts to determine that.

Mr. Allen: Or if the reference were framed in terms of the status of the charter vis-à-vis the rest of the Constitution. That would be the more comprehensive, would it not?

Ms. Hill: Yes.

Mr. Allen: Yes. Thank you.

Mr. Chairman: I have Mrs. Fawcett, Mr. Breaugh and Miss Roberts.

Mrs. Fawcett: Thank you very much for your very fine presentation this morning. We really appreciate it. You express concern, and rightfully so, about the participation of women in the process of constitutional reform. Do you have any specific suggestions to make as to how we might rectify this? In your plan, do you have some kind of a skeleton plan as to how you would do this?

Mrs. Penfold: A woman Premier would help.

Mrs. Fawcett: I could not agree more.

Ms. Hill: The simple answer is yes, but I am sure that is not what you want to hear. We do have various plans in the works within our own organization related to supporting women who are interested in getting involved in the political process. However, even within the recognition that there probably will be some discussion about amendments to things as crucial as the Constitution of the country, we are suggesting in our recommendations and at the end of our brief that one of the things that should be built in is consultation prior to those discussions, that someone will notify groups across the country to say that: "The next time we get together to have a discussion amending the Constitution, we will be discussing the things that Mr. Beer has mentioned. We invite you to submit your reaction to these possibilities." That kind of discussion should happen at the front end of the process rather than after the fact.

Mrs. Fawcett: Such as we are doing now. This is sort of the cart before the horse. OK.

Ms. Cline: Right. And that women are just not placed in a role of reaction--a reactionary process--but, rather, initiating more than we have been invited to do in the past, and are willing to do I must say.

Mr. Breaugh: A quick question on process. Many of us think this process stinks and that we have been put in a totally untenable position; that there is no good way to cut. For example, it appears there may be the opportunity to sort out who is right, who is wrong, about the charter argument. Does the charter have an impact on this? Does this impact on the charter? That can be done by a court reference. The Premier this morning does not seem too thrilled about that idea, but someone is going to put that in front of the court. It is going to go there one way or another. The question is how quickly will it go there and how will it be framed. So that decision is going to happen one way or another.

The two entities in the country--the Northwest Territories and the Yukon--have already got a challenge going about the process and whether this

was legal or not. We are not supposed to entertain amendments, says the Premier. Everybody across the country in every legislative chamber is supposed to accept this holus-bolus. A process is set up so that, theoretically anyway, every year the Constitution of Canada would be amended, and every year all of the legislative assemblies across the country would say, "Yes, great idea." If we do not get the thing straightened around, in about three years time, this country is going to be in one holy hell of a mess. From one end of the country to the other, no one will understand what is the Constitution, what is the law or who has what rights. And the lawyers, bless their little souls, will be immensely wealthy because they will be arguing all of these cases. I would like to hear a little bit more from you about the process.

The reason why I want to egg you on a bit is because you did not do very much in your recommendations about process, although I noted that you expressed your dislike for the current process.

Ms. Cline: The last recommendation itself certainly is something I think deserves serious attention. To eliminate some of your concerns and give you a free voice and all others who have this kind of feeling, that there be a free vote in the Ontario Legislature on this issue. So that is one area that--

Mr. Breaugh: Yes, but that is like letting me play hockey with Wayne Gretzky. I can do it, but it is not going to be a terribly successful venture.

Ms. Cline: Well, he is not doing too well right now anyway.

Mr. Breaugh: I will hobble to the bank with him any day of the week.

Mr. Chairman: Everything is relative.

Ms. Hill: I would just like to comment on the process of amendment. I wonder, as I am sure many of us do, why the whole concept of annual meetings to tinker with the Constitution was ever thought of in the first place. There are constitutions in place around this world that have only been amended two or three times in the history of their existence. So it seems to me that one of the things that could be explored by this committee and by other groups would be to say that the Constitution would be amended when it clearly needed to be amended--when there was an overwhelming groundswell of legal opinion and political pressure and thorough knowledge that there was something drastically wrong with it. That would be a time for some kind of massive gathering of knowledgeable people to say how shall we fix this egregious problem.

Not that we would all gather together or that they would gather together every once in a while and ask, "What shall we do with it this year?" That does not strike me as a very sensible way to deal with the legislation, or the law, that covers everyone's life in this country. It took us a long time to get it. I would appeal to the members of this committee and anyone else who is concerned about the issue to say, do not have annual constitutional conferences. That might be a very simple solution.

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Miss Roberts: If I might just address that last statement made on behalf of the presenters. That might be a problem that is inherent in the Charter of Rights and Freedoms itself. It might be that we have been too specific in the Charter. Most of the constitutions are very general constitutions and have platitudes that are spoken of, and when we did the charter in 1982 we may have been way too specific on many things and, as a

result, we got together and said that some changes have to be made.

I can see that a constitutional conference each year is going to be a great hindrance, or may be a great hindrance, but I do not expect that each year there is going to be a change suggested in the Constitution.

Why we are here today is to find out, for one thing, what process we can put in place so that when they do go on a yearly basis we have had some input into what they are going to discuss, and some input into what should be discussed in the future as to what our concerns are.

You mentioned some things, such as opportunity for discussion, people to get together, legislative committees, but there has to be a more direct process put in place. What I would very briefly like to ask you to do, as the last two speakers have, is do you have any process that you think is going to work? Have you thought that far down the road other than you making presentations to various groups? What process can we put in place that is going to be helpful when you know we have three months to do this, or seven months to do that? Have you thought about that? If you are going to make constitutional conferences work there has to be good structure in them. I think that might be something we should be putting our minds to. Have you thought about that?

Ms. Hill: We thought about that. We do not have any conclusion on it, but if you would be interested in the follow-up material to this committee after we have consulted with advisers and explored the topic pretty thoroughly we may be able to give you our opinion on a suggested outline.

Miss Roberts: We cannot just say that the process that we went through is wrong because everyone agrees on this. We all agree that the process we went through is flawed, but what process are we going to put in its place? Are we going to go through a constitutional conference every year? As you have indicated with Brian and the boys, it will be with someone else and the girls, and that is just as bad to have someone else and the girls there. It does not make any difference whether it is all men or all girls. The process itself is wrong. I really would like to hear the comments if it takes further time.

Ms. Hill: The basic elements are included in our report at the top of page 10. However those end up looking in detail, those are the things that would be the framework for what we would be expecting.

First of all, there would be prior notice about what is under discussion, and what sort of amendment is under consideration. There would be notification to all and any citizens of the country. There would be a series of activities put into place so that hearings would occur at the front end of the endeavour. There would be informed hearings who could advise and assist along the way. Then there would be a thorough and open debate in parliament and in each of the Legislatures. So however that may look on a refined basis those three elements have already been included in the brief.

Mr. Chairman: Thank you very much for joining us this morning and setting out your views. I should note that it is hard to try to think out a process in detail that can avoid all the kinds of potential pitfalls. This, I believe, is the first legislative committee that has been looking at that particular issue. While we have the Meech Lake accord, which we must examine and report back to the Legislature on, it is the first order of business. We have been struck, not only individually but with each group that has come

before us, in terms of just how the process has failed us.

I think Mr. Breagh has made the argument on a number of occasions that one of the problems with the accord, apart from whatever is in the accord, is the way in which it was arrived at, which tends to engender the feeling as to what sorts of things were going on, or what deals, if any, were being made. It may be that nothing in particular happened; it was just late at night or early in the morning and everybody was somewhat asleep. But it certainly focuses on that.

We thank you very much for the recommendations. Certainly those touch on items that others have raised and, I am sure, others who follow will raise. But it is very helpful to have those in such a specific format. Thank you for coming.

Ms. Cline: Thank you, once again, for giving us this opportunity to dialogue with you as well as to make our presentation.

Mr. Chairman: I will call upon the representatives of the Persons United for Self-Help in Ontario, Cathy McPherson, the provincial co-ordinator, and John Southern, a member of the organization.

Just while you are getting seated, the Coalition of Provincial Organizations of the Handicapped has circulated to us the presentation that was made to the special joint committee. I understand that you have a brief which will be coming to us, and we will take this as background reference.

Please feel free to proceed with the remarks that you have. At the conclusion, we will ask questions on that, but this will be very valuable to us as well. If I have missed someone--and I think I must have because I named two people and there are three--perhaps you would be good enough to introduce the other person.

PERSONS UNITED FOR SELF-HELP IN ONTARIO

Ms. McPherson: We are fortunate to have Harry Beatty here, who is a staff person at the Advocacy Resource Centre for the Handicapped and who is acting as our legal counsel. However, I should stress that this is our position paper and our presentation. They are merely our legal counsel.

Mr. Chairman: Fine. Please proceed.

Ms. McPherson: I do have a corrected version of this presentation if you want it. I do have some information sheets on our organization. If people are not familiar with us, we are the Ontario affiliate to COPOH, which is why we are using its position paper. COPOH is the Coalition of Provincial Organizations of the Handicapped, and most of the provinces in Canada belong to that as well as a number of associate members, such as the association of the deaf and that kind of thing.

I would like to start by saying how pleased we are to have the opportunity to present our comments on the 1987 constitutional amendment, especially as it promises to have such a tremendous impact on the lives of persons with disabilities in Canada in the next few years.

As many of the other presenters have indicated, however, we are deeply concerned that the Premier (Mr. Peterson) does not believe that the accord should be altered in any way. It is our belief that if the language of the

accord remains the same as it does now, many of the gains in equality and self-determination that disabled people have fought for in the last few years will be wiped out. If this government is sincere in its support of the proclamation of the Decade of the Disabled, we hope it will reconsider its position before these hearings have ended.

That being said, you have copies of the presentation of COPOH and I will be referring to that throughout this presentation here.

First, I would like to say we are pleased that Quebec was reintegrated into the Canadian constitutional framework. We recognize the special status of Quebec within Canadian society and nothing in our presentation is meant to detract from that special status.

We have three major concerns with the constitutional amendments as they are presently drafted. One has to do with equality rights of persons with disabilities under this accord; another has to do with the spending powers as outlined in this document; and the third has to do with the process of amending or changing the accord to meet changing needs in our country.

Persons with disabilities fought long and hard to be included under section 15 of the Charter of Rights and Freedoms. We won that right over the advice of many legal experts who would have denied us the fundamental right to equality in this country. Through the equality guarantees in the charter and other initiatives we are slowly creating change in this country that will improve the lives of persons with disabilities.

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The wording in section 16 of the accord threatens to put an end to all of this by stating that multicultural and aboriginal rights will not be affected by section 2 provisions. By singling out these two groups and not mentioning other groups covered under the charter in this provision, such as persons with disabilities, a legal argument could be made that other individual rights guaranteed by the charter, including equality rights, could be affected by the accord.

This wording has the potential of encouraging the development of a two-tiered system of rights in this country under the charter, which was never intended when the charter was originally established. COPOH has urged the federal government to consider making the following amendments:

"(25) Nothing in the Constitution of Canada abrogates or derogates from the rights and freedoms in the Canadian Charter of Rights and Freedoms."

and

"(16) Nothing in the Constitution of Canada will abrogate or derogate from section 35 of the Constitution Act, 1982 or clause 24 of section 91 of the Constitution Act, 1867."

We urge you to affirm your commitment to the equality rights of persons with disabilities in this country by adopting these changes.

Our second area of concern lies with the description of spending powers as outlined in section 7 of the accord.

Many of you are probably aware that roughly 50 per cent of people on

family benefits or welfare in this province are persons with disabilities, and I understand that is a low estimate. Not surprisingly, close to 50 per cent of persons with disabilities are illiterate and an estimated 50 per cent to 80 per cent of persons with disabilities are unemployed or underemployed.

We are talking about a very vulnerable, impoverished population that depends on health care and social assistance programs in this country to ensure their survival and equal participation in our society. On an national and provincial basis, we are struggling to work with federal and provincial governments to create new programs that better reflect the needs of persons with disabilities.

We are deeply concerned that the wording in section 7 of the accord will create insurmountable barriers to any new initiatives being established, especially the development of universal programs, for instance, in areas of assistive devices or attendant care/support services; and ensuring consistency in programs for persons with disabilities from province to province, as well as lowering the standards of present health care and social service programs, which persons with disabilities are so dependent upon.

We are particularly concerned about the wording of this section in the following areas.

The first area we are concerned about is the term "national objectives." How are "national objectives" defined and what is their scope? A clear definition of what this term means is essential to establishing policy goals and future social programs.

COPOH suggests in its paper that an interpretation of "national objectives" be included in this section with the minimum basic elements: (1) public administration on a nonprofit basis; (2) comprehensiveness; (3) universality; (4) portability; (5) accessibility; (6) provision of information on the operating of the program; and that the federal government, in consultation with the provinces and interest groups, have the responsibility of defining "national objectives" in further detail for each program.

"Compatible" is another term in this section which is too vague for our group. Enabling language must be included in clause 7 of this section to allow for federal government program criteria or conditions, which will provide for a high minimum level of services, a monitoring mechanism and a system of redress for noncompliance.

There are already breaches of national standards going on across this country and the federal government has been legally challenged over its ability to enforce national standards. If we want to see persons with disabilities get the programs they deserve, the federal government must have the ability to ensure high minimum levels of services through a system of monitoring for compliance with program objectives and conditions and a mechanism for redress for noncompliance, specifically provided for in the Constitution.

I would like to point out an example of this that we heard about, which was happening in Alberta, where a school board ran out of money and simply cut back buses to get disabled people to school. This is the kind of thing that is really repugnant to our group. It is just criminal to see that kind of thing happening. It is the very thing we want to ensure does not happen.

Finally, the use of the word "initiative" in this section is extremely troubling to us. As the Canadian Council on Social Development points out:

"The problem presented by this phrase is whether the word 'initiative' includes policy instruments which lack continuing public sector involvement... 'Initiated' suggests that provinces may pursue policies through means other than programs and, so long as those initiatives meet the objectives of the national shared-cost program, federal funding will be available.

"The normal way in which policy initiatives are pursued short of programs is through some tampering with fiscal powers in order to induce private actors to act in the manner constant with the policy. For instance, a government... may well pursue its concerns for preschool child care through encouraging a number of private initiatives. It may choose to encourage post-secondary school students to enter community college programs in early childhood care and in this way create a glut of available early child care workers who would in turn drive down the labour costs of day care. Alternatively, it may wish to reward families in which one of the parents stays at home to look after the children of the family. Or it may wish in some way to reward entrepreneurs who establish private day care facilities.

"It could be that none of the policies would satisfy the desired standards of the shared-cost program, yet they should be policy initiatives that could be compatible with the objectives behind the federal program. Provinces adopting these strategies would, therefore, qualify for federal compensation... The use of the word 'initiative' suggests that instruments which are quite diverse will qualify under section 106A and this leads us to conclude that the concept of objectives could not be too stringently interpreted, or else the decision to let provincial 'initiatives' qualify for compensation would be rendered pointless."

COPPOH suggests in its paper:

"The spectre of a patchwork of social programs, which do not really address the true problems, looms before us. It is not too difficult to envision a similar scenario for self-managed attendant care, which is very important to disabled people. For example, the federal level may seek to encourage through a shared-cost program the provision of transfer payments to disabled people for self-managed attendant care to foster independent living in Canada.

"A province may seek and qualify for compensation because it has initiated a program of support for relatives who provide care to disabled adult family members. Though people are receiving care, the fundamental objective of self-managed attendant care has been missed--the control of resources being invested in the individual and the resulting increased independence and personal empowerment which comes with this. The provincial solution stimulates the provision of care but maintains patterns of dependency and paternalism... Initiatives could be accomplished through grants to the private sector, provincial incentives to 'induce' the private sector to initiate certain practices or contracts of service. It is by no means clear that these types of 'initiatives' will be subject to charter review."

Although PUSH does not have an official position on the free trade agreement, we note that the present wording of schedules 1 and 2 of the free trade agreement which allows for contracting of social services to the private sector to manage hospitals, nursing homes and homes for the disabled would appear to reinforce our fears in this area.

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We recommend that the following changes be made to this section, along with the ones previously mentioned:

That the words "or initiatives" be deleted from subsection 106A(1) in section 7 of the accord.

That section 7 be amended to include the following clause:

"106A(3) The Charter of Rights and Freedoms applies in respect of any national shared-cost program that is established by the Parliament or the government of Canada and to programs or initiatives established by the Legislature or government of a province seeking compensation from the government of Canada pursuant to this section."

That section 7 of the 1987 constitutional accord be amended to ensure that it contains wording that clearly permits the federal government to attach conditions which will entitle Canadians to comparable access to and quality of services established by national shared-cost programs.

This last recommendation is of vital importance as these conditions play a large part in bringing about some measure of national standards in Canada. For example, Canada assistance plan payments are conditional upon provincial social service systems having appeal procedures and no residency requirements, among other things.

John, you wanted to add something to this section.

Mr. Southern: I do not know about add, but I certainly would like to reaffirm some of what you have been saying. As a disabled person, the privatization issue is certainly a real concern. As Cathy said in regard to the profit motive, if somebody is not making enough profit in a home for the disabled or a hospital, what is cut back on? They cut back on services to the people they are serving. That is the only way they can keep up their profit levels. Service goes down.

It has been a real concern of mine, even without the Meech Lake accord, that this is starting to creep into our society. The growth of private health plans is a real problem. Certainly the possible erosion of social assistance is a real concern of mine. I can see it taking place because there are no real national standards.

Ms. McPherson: The final point we would like to make is on the amending formula. Our Constitution must be able to reflect changes in our society. By insisting that the provinces agree to change with, I believe, a two-thirds majority, our current system will become fossilized. It is already almost impossible to make changes with the present amending formula. We have heard that although hearings are being held here into constitutional reform, the provincial and federal governments have no intention of changing a word of the accord.

Groups such as ours, for people who have been traditionally left out of the consultation processes, must be allowed to have a chance to have input into the policies and planning in this country, especially where it will have an impact on our lives.

Many of you have indicated your willingness to assist the disabled both

publicly and privately. By accepting our modest suggestions for change, you can do something concrete to ensure that people with disabilities maintain their equality rights and the services they will be dependent upon in the future.

Maybe you have questions on our presentation. I know it sounds like you have been through a lot of this before, but we provide our own views.

Mr. Chairman: Thank you very much. We do have a copy of your presentation. I want to thank you as well for setting out the recommendations, which certainly help in focusing on some of the points you did raise. I will move directly to questions.

Mr. Breaugh: Much of what you seem to assume--and a number of other groups share this--is that the federal government of Canada will set good standards, will set good programs. I have to tell you that my experience in Canadian politics is exactly the opposite. The federal government is about the most useless group to try to deal with.

They are a long way away, for one thing. For example, we were trying to get some transportation for disabled people in my own community. The federal government is in Ottawa. They have no time for my people in Oshawa. They did not do very much for us. They did not set any standards or give us any money. We did that locally and provincially with the politicians we could get at.

By and large, theoretically, I accept the argument that the federal government should have prime responsibility in this area, essentially because it has the financial resources to do it. The problem I have in searching through this is that I cannot come up with any logical reason why the federal government would be any better at this than the province. My experience in politics tells me that they do not, that we certainly now have a federal government which believes very strongly in privatization, which believes very strongly that many of the programs I would advocate are of secondary interest to it, so it is not its top priority.

I am wondering what is so wrong with having a province like Ontario establish a program which may be better than a federal program. A number of our provinces have done this. I would like to get some sense from you why you believe in the supremacy of the federal government in taking these initiatives when its track record, frankly, is not that good. I am reminded that medicare was first put in place by a provincial government, not by a national government.

Ms. McPherson: I think we would all agree that there are a lot of national programs that are flawed and we are working with the federal and provincial governments to change those flaws. By suggesting minimum standards be established, we are certainly not suggesting provinces not do better. We are not suggesting provinces not go beyond that. There is no reason why provinces should not go beyond minimum standards.

The problem, when you look at things from a province-by-province perspective, is that in a province like Ontario we are richer than other provinces. I guess, as disabled people who are part of a national movement of disabled people, we see people in poorer provinces getting the short end of the stick. There is the situation with the school buses. There are many examples all across the country where people are really getting very poor treatment. The idea of having national standards is to ensure that people across the country who are disabled get at least a minimum standard from those services.

I think it is great that some provinces have established better programs. We know that some of those programs exist. In fact, there are a number of provinces poorer than Ontario that established assistive devices programs for all their citizens long before Ontario did, and that is a good example. Those are our concerns and that is the reason we are making that particular recommendation. We want to see disabled people get a fair deal across the country, not just in the richer provinces.

Mr. Breaugh: OK. I think I understand where you are coming from, but to use the example I did before, the poorest province in Canada, Saskatchewan, implemented medicare before the federal government was prepared to do it. I am not convinced it is the level of government that is the key factor here. Perhaps we can point to another area I used as an example, transportation for people who have some kind of disability. If you live in Toronto, you could argue that the system of transportation for disabled people in the city of Toronto is not very good, but if you live in Tweed or Marmora, you would say the system does not exist.

Is it your argument that there should be a national standard everybody has to meet that is clear, defined, regulated and all of that? If that is the basis of your argument, I do not have any problem with it. But I remind you that history often tells us that it was not the federal government which took the initiative and I do not want to shut down the option of a province, however poor it might be, deciding, "We ought to do a better job at this than the federal government requires us to do."

Ms. McPherson: In our presentation, I think we talk about the need to have compliance and to ensure that provinces meet a certain standard, but we are not saying that provinces should not have the opportunity to go one better than the standards. We are not saying that people should not have the initiative to do it. Certainly under the Canada assistance plan legislation right now, provinces can take initiative and have taken initiative and we want to increase those abilities for them to do it.

I do not know. This is the stand we have taken and I guess we have taken it because we want to make sure--the other issue, which we have not really addressed in this particular presentation, is portability. A lot of disabled people may want to move from one province to the next and we want to be assured that the services in different provinces are similar or that they are getting a similar level of services. Portability is also important to our people, especially when you are thinking of attendant care, for instance. If we are changing the whole attendant care program, then portability is very important. That is another reason why national standards are important to us.

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Mr. Breaugh: Where I would agree with you is in terms of an individual's right to have some kind of program. That is where I would put the emphasis. I would put less of an emphasis on those parts that deal with programs and how you operate the programs because I think history tells us that many of our provinces disgrace the federal government in terms of being able to outperform national standards. They do much better.

As to our success ratio, my judgement would be that whenever the national government of Canada sets out to put down standards, for many people they become the absolute. That is where they are at and they never go beyond it. That is my reluctance in terms of nursing homes, hospitals and things like that. Care of the elderly, for example, is a place where minimum standards

were put down and when the private sector moves in there, it takes those minimum standards and makes them maximum standards. That is a problem I have with that just general approach to providing some kind of service.

Ms. McPherson: But are you not talking about a problem of compliance where people are not being punished? I think that is the issue at hand there, not the fact that the federal government has guidelines. It is the fact that there does not seem to be any teeth in making sure people live up to those guidelines.

Mr. Breaugh: Exactly. Our success ratio in terms of compliance with those standards stinks. We have been at it for a long time so I am saying let us get off that one and try another track just to see if we can do it in a better way.

Mr. Eves: I have just one question. I note with interest your recommendation with respect to equality rights. I gather, though, that you are not convinced that the one amendment, or those two amendments as you put them, will solve the problem. In addition, you would like amendments to section 106A and section 7. Is that right?

Ms. McPherson: That is right. Our concern is that some of the initiatives or some of the terms referred to in that section may not be covered by the charter. When we consider the number of people using social assistance programs, it seems unjust to suggest that those programs not be covered under the Charter of Rights and Freedoms.

Mr. Offer: I would like to carry on with the discussion of this whole question of the spending power provision, section 106A, especially with PUSH being one provincial organization of a number of provincial organizations across the country, maybe more so than any other presenter. In areas of exclusive jurisdiction with respect to federal programs having some national standards, section 106A will allow provinces, apart from entrenching the right of the feds to enter into these cost-share programs which I think in your presentation you say is good, to say: "Listen, we see the national program. It is in an area of exclusive provincial jurisdiction but we think we now have an option. We can now either go along with the national program or say that our province is different from other provinces." I think in your presentation you have acknowledged that in certain areas.

Now the provinces have that flexibility to meet, first, the federal standards, but second, they have the right to implement a program in their jurisdiction which particularly meets specific needs. Because indeed you are the Ontario affiliate and there are affiliates across the country, my question to you is, what would be the concern with respect to that?

I think you have indicated that in reality the needs in a general sense are there across the country. There is no question about that; I agree with you. Province by province, there might be a different emphasis, a change. Now with this section 106A, as the Ontario affiliate and the Alberta affiliate and the Saskatchewan affiliate, you will be able to go to your provincial government and say: "This is the national program. We think it has some good points but we can urge you to opt out and deal with this matter very much so on an Ontario, Alberta or Saskatchewan base."

My simple question is, do you not think that degree of flexibility which is now founded in section 106A may in very large part help organizations such as yours to make certain that programs which are needed are implemented?

Ms. McPherson: I think you should be clear that in our presentation we are not saying this particular amendment to the Constitution is all bad. What we are suggesting in our presentation is that some of the wording could be made more effective. In the way it is worded now, we are concerned about the wording. First of all, it undercuts the equality rights of disabled people, but also in terms of spending powers it may undercut social services and health care services. We are not saying that every one of us would agree on a provincial and regional and city basis. Of course, programs should be adaptable to the needs of those areas. I do not think any of us would disagree with that sentiment. That is not the point we are making in this submission. Our submission is just pointing out that some of the wording is too loose and too vague and needs to be tightened up.

Mr. Offer: I understand. Just to reiterate, you are not necessarily against the principle contained within section 106A. You are just concerned that the principle and intention, I think of all persons who signed the accord, is in fact going to be carried forward.

Ms. McPherson: We feel there should be national guidelines, but I do not think any of us will disagree that there has to be flexibility from province to province and I think some of the federal-provincial agreements allow for that. If you look at the Canada assistance plan, it allows for variation from province to province, as do some of the other programs. That has always been there and I do not think any of us would disagree with that.

Mr. Chairman: I should just note before turning the microphone over to Mr. Allen that the angelic choir you hear in the background was not necessarily planned that way. It perhaps adds significance to this morning's proceedings.

Mr. Allen: You just did yourself out of a compliment, Mr. Chairman. I was going to compliment you for arranging such stirring national music to keep our minds firmly at the task and our hearts fully motivated to achieve the best for our great country.

May I say that I am very delighted PUSH has come before us to lay its concerns about the Meech Lake accord before this committee. One of the most notable things that I think has happened in the half dozen years I have been in the Legislature is the increasing frequency with which groups representing various communities of the disabled have been here to tell us of their concerns and to do so with increasing sophistication and strength of argument and so on. I just hope that continues to happen. Second, it puts some credence in your suggestion that like other groups in the community, you also want to be fully part of the amending process and the feeding process to our senior politicians as they go into these constitutional debates.

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I want to ask you something very briefly that is not about something you have not said, or something you have said. You do comment that you are very pleased the accord appears to reintegrate Quebec into the Constitution and brings that province back to the tables of national deliberation.

I just want to ask you whether you have any concerns at all about the "distinct society" language and the special status of Quebec in that respect as providing any problems for people who are handicapped or disabled and their concerns? Does that help or hinder or is it a fairly neutral thing in your mind? I notice you did not emphasize it and I wondered whether it just simply was not a concern at all.

Ms. McPherson: I think I will let Harry Beatty answer that one, but I want to point out that we are part of a national organization. We want our Quebec people to feel that we are part of a unified group. We are happy to see them part of that. We respect the fact that they have a unique culture. That is important to stress. I know there are some concerns. Perhaps, Harry, you can elaborate. I noticed you had some things you thought might be a bit of a concern.

Mr. Beatty: I guess one way of approaching it is that I do not think there were concerns particularly within disability organizations when the "distinct society" principle was recognized. It was sort of in the second stage where section 16 appeared that things started to become more confused. I do not think there is any kind of perception that Quebec is less supportive of the equality rights of disabled people than other provinces or that the "distinct society" clause would be a threat in that way. In some areas, they have in fact been innovators.

Mr. Southern: Although I have had some concerns from some disabled people in Quebec about that very issue, as Harry said, over the past few years Quebec governments have been pretty good in some of the legislation they have passed. But you do not know what kind of government you are going to get down the road and it certainly has been raised to me. I did a little piece for a radio show I am working on and those concerns were raised, that people in Quebec might be denied programs and might not get as good treatment as disabled people in the rest of Canada.

Mr. Cordiano: I would like to thank you for coming to appear before us. Very quickly, I want to put forward a question to you about the fact that section 106A may enable us to have a national program with respect to guaranteed annual income. I would like your view on that.

Ms. McPherson: Groups of the disabled have been talking about that for a long time. In Ontario, we belong to the ??Income Maintenance Working Group. We have worked out an elaborate scheme around that. It certainly is not ruled out at all. It is one of the things I know the Coalition of Provincial Organizations of the Handicapped and its affiliates, including us, will be talking to the federal government about.

I guess the complex part of it is that you have your income maintenance aspect and then you have other services. It is trying to make sure you maintain the services as well as a level of income that needs to be worked out. Harry, do you have some comments you want to make on that?

Mr. Beatty: It raises a number of issues. One is that constitutional jurisdiction over income support has never been all that clear anyway. As far as I know, it has never been directly determined, the extent to which the federal government can or cannot use its spending powers to pay support directly to individuals. When it got into old age security, there was a constitutional amendment, so the thing was not tested. Then there was a different kind of constitutional amendment when the Canada pension plan was instituted.

The whole area of income support, though, is split between the two different jurisdictions, federal and provincial, and there does seem to be some lack of co-ordination. For example, in January 1987 the federal government increased Canada pension plan disability, with the result that in some of the provinces there was a corresponding decrease in the social assistance paid to disabled people. In Ontario the family benefits were

increased by \$50, but in other provinces the provincial government just, in effect, took the increase. Similarly, people who have rights to private disability insurance in many cases just found their disability insurance payments reduced dollar for dollar. In writing to the two levels of government, Mr. Sweeney and Mr. Epp, I saw that it was pretty clear there was no real discussion that had looked at these problems in advance.

Part of the concern with section 106A is just the uncertainty. Already it seems to be difficult to get consultation and reform in this area that looks at all the issues. Another example--

Mr. Cordiano: But if I could just interject, that in fact was the case prior to this.

Mr. Beatty: Yes.

Mr. Cordiano: It still exists. We have a lot of uncertainty about how the federal government would negotiate with each of the provinces on a number of items, and certainly, as my colleague Mr. Breaugh pointed out, the track record is not the greatest with respect to the federal government establishing programs in the social areas. Some of those programs leave a lot to be desired in some areas. Who is to say? I mean, I would not put my trust in this government in Ottawa to come up with a program that is going to meet your objectives and your needs.

But I would say that, with respect to a guaranteed annual income program, we may have more of an opportunity to do that now because the federal government's jurisdiction in areas of exclusive provincial jurisdiction has now been recognized constitutionally. Therefore, it may open up this whole area to the federal government, whereas it may not have been clear before and we had a lot of controversy and a lot of negotiating back and forth. There may be a better opportunity for that, or would you disagree?

Mr. Beatty: The concern remains that section 106A does not really clarify the ground rules. It does not clarify in areas like that exactly where the boundary is between exclusive provincial jurisdiction and federal jurisdiction. It also just creates a lot of uncertainty about what the federal government can or cannot do.

I acknowledge the problems with some of the federal government programs, but in some of these areas, because they have the income tax powers and so on, they are the only ones with the money to do it, and it will not go ahead unless they can bring about some initiatives. This happened in the 1960s with the Canada pension plan, the Canada assistance plan and so on.

One concern would be that this just creates a period of uncertainty. We would like to believe that it has made the ground rules clearer, but the language is not that precise, and we are concerned about whether federal initiatives may be subject to extensive litigation and so on.

Mr. Cordiano: OK. Thank you.

Mr. Chairman: Thank you very much for joining us this morning. I think one of the things your submission has underlined very clearly is that any process which ultimately is developed to deal with constitutional change really requires this sort of discussion prior to and, probably to a certain extent, after certain undertakings in principle may have been arrived at.

As Mr. Allen has pointed out, I think there is a certain consciousness coming through today that would not have been coming through 10 years ago in terms of a number of groups and organizations that feel very strongly that perhaps their needs and concerns were not adequately dealt with as this particular agreement was arrived at. So we are very appreciative of the time you have taken. In a sense, we have received two briefs this morning with some quite specific recommendations.

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Mr. Southern: Could I make one point?

Mr. Chairman: Please.

Mr. Southern: The point of consulting with persons with disabilities is really important, as you pointed out, but we have really got to make sure that that process works. I do not think many disabled people in the province even know that this series of hearings is taking place. I do not think the outreach to the disabled community has been very good at all. Specifically, as a print-handicapped person, you should try to get a hold of a copy of the Meech Lake accord in a usable form, either on tape or in Braille. You will not find one and you will not get one. That is why I have not participated as fully as I might in these proceedings today, as you might have noticed. Cathy can pick it up and read it; I cannot. I think this province, and the federal government too, have really got to ensure that if you are going to have meaningful dialogue with the disabled, you have to give us all the tools we need to do it.

Mr. Chairman: An excellent point. Often those of us who do not have that particular disability simply do not think about it, and I am sure that must be of great concern. To you and others it seems so simple to say, "Look, if you are going to deal with something like this, have it in Braille, have it on tape so that we can deal with it."

Mr. Southern: And particularly when there are more than just blind people who are print-handicapped.

Mr. Chairman: Right. Thank you again for coming this morning.

I call upon our next witnesses, from the Junior League of Toronto: Romily Perry, the chairperson, and Sharon Moxon, the president of the Junior League of Toronto. I think we all have a copy of the submission you are going to make, so let me say welcome and thank you very much for joining us this morning. If you wish to proceed with your presentation, we will then follow it up with questions.

JUNIOR LEAGUE OF TORONTO

Mrs. Moxon: Thank you, Mr. Chairman and members of the committee. This is Romily Perry, chairperson of the public affairs committee of the Junior League of Toronto, and I am the president of the junior league.

I will just take a minute or so to familiarize you with the Junior League of Toronto to put into context why we are here. The Junior League of Toronto is part of an international women's organization which contributes effective volunteers and funds to improve its community. Admission to membership is open to all women between the ages of 18 and 39 who are interested in leadership opportunities and community involvement.

The Association of Junior Leagues, which is the international affiliation--there are leagues in Great Britain, Mexico and the United States--the Federation of Junior Leagues, which is our national group, and the Junior League of Toronto all support the goal of fair and equal opportunities for women and men and we will continue to advocate attainment of that goal.

The programs of the junior league, be they direct service to communities or training programs for our members, as well as our public policy statements, all attest to our strong commitment to improving the position of women in today's society. We currently have programs in the area of child care, services to separated and divorced women, health care for women and information programs about women and addiction and adolescent eating disorders.

I think it is clear that we do care about the rights of all, whether they be the needy or the disadvantaged, but above all we do care about the rights of women and we are concerned that the rights of women that were so fervently sought and entrenched in the Charter of Rights are at risk. Specifically, we would like to touch briefly on three issues: equality, shared-cost provisions and process.

Regarding equality, the positive comments we have heard on the Meech Lake amendments give the impression that the sole result of the accord would be to bring Quebec into the Constitution. The Junior League of Toronto supports that result. However, the ambiguous language of the accord makes its relationship to the Charter of Rights very unclear.

Experts such as John B. Laskin, Ramsey Cook and Eugene Forsey contend that there are grave problems in the accord with respect to its relationship to the Charter of Rights. They maintain that if the Charter of Rights and Freedoms is to be subordinate to Quebec's rights, then it should be stated clearly so that our first ministers can make an informed decision. If the charter is not to be subordinate, then let the accord state it clearly so that Quebec can make an informed decision.

It is our understanding that a constitution and a charter of rights are meant to protect us from the caprices and whims of changing governments from time to time. We believe that the designers of the Meech Lake accord neglected to keep the future in mind or to look at all possible implications of the accord. We simply ask that the accord uphold equality rights and ask that the accord be amended to include sections 15 and 28 of the Charter of Rights.

The Premier (Mr. Peterson) has asked that we prove that our rights are in jeopardy, yet none of the first ministers can assure us that are rights are secure. The Supreme Court of Canada will probably decide this important question. When there is sufficient ambiguity in the interpretation of a provision that experts are divided on its potential ramifications, we really feel it is the responsibility of the legislatures to clarify these issues rather than to leave the impact of the accord to chance through the courts. If the interpretation by the courts is that the charter rights are secondary to the linguistic duality and "distinct society" clauses, then it would be too late because, of course, the accord would then be part of the Constitution. Amending the Constitution is not an easy task and there could be no assurance that it could or would be done.

The Premier has stated that unless he hears any new arguments by women, he will stick to his opinion that our rights are not in jeopardy. We come with no new arguments, but we are adding more than 600 voices to those experts we have heard, such as Mary Eberts and Beverley Baines, who say that our rights could be in danger.

Mrs. Perry: We are aware that the federal cost-sharing programs with the provinces represent about one quarter of the federal budget. Many of those cost-sharing programs in the areas of education, skills training, language training, health care and welfare ensure equality and equal opportunity for women.

The vague language in the spending power provision makes us uneasy. A province will have the ability to opt out of newly created national programs and receive compensation if the provincial program is compatible with national objectives. Whose responsibility will it be to set the national objectives? Will they be set before the provinces opt in, or will they be negotiated down to the lowest common denominator to ensure that provinces do not opt out? Will programs be halted or delayed because no agreement can be made on national objectives or reasonable compensation? Will objectives be the same as standards?

The people of Canada rely on a strong federal government for national leadership in many areas, including education, social assistance and employment programs. The accord will create a checkerboard of programs available across Canada with little hope of transferability of benefits.

Because the federal government's newly announced child care initiative was created in the spirit of Meech Lake, there are no national standards providing accessible, affordable quality child care. Child care is one of the pressing needs of women who are struggling to better themselves through education, struggling to support themselves with jobs still paying only 65 per cent of a man's salary and struggling to support their children when a reluctant father has disappeared. A national child care scheme could assure a national program with standards of care acceptable to all provinces. Child care groups could be involved with creating a solid foundation for the provision of affordable, accessible quality child care. However, we see this new child care initiative as a blueprint for future programs after the Meech Lake accord, and we despair. A lack of national leadership creates an inequality of services across the country.

Because the opting-out clause becomes law in the Constitution, the Supreme Court may ultimately rule on those matters which previously were negotiated among the provinces. What access will individuals or users or advocacy groups have to the courts to aid the latter in their decisions?

The language of this provision is so vague and leaves so many questions unanswered that we want an amendment that can assure that the federal government has the power to attach conditions such as accessibility, quality, universality and comprehensiveness to national shared-cost programs.

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The Meech Lake accord federal hearings came at a time and with such speed that many volunteer groups, including the Junior League of Toronto, had no time to study the accord and no time to confer among its members or affiliates. In essence, we were frozen out of the process. We believe it is vital to the wellbeing of Canada as a whole that its citizens in every sector comprehend our Constitution and the tenets of the Meech Lake accord.

In the ??Guide to the Constitutional Accord there is no discussion on how the citizens of Canada would be heard or how their concerns would be addressed. In fact, the language in the accord makes it quite clear that all 11 first ministers have committed themselves to having their legislatures

ratify the accord without any modifications. It is frightening to us that the governments of Quebec, Alberta and Saskatchewan have ratified the accord without giving the citizens of those provinces their democratic right to participate in developing the future of our country.

We are more fortunate in Ontario: We have been given the opportunity to speak up. We hope you are listening and we hope you appreciate that many more individuals and groups would have come forward had they had the resources. We think you have a wonderful opportunity to be the bridge between us and them. You could be heros of the people of Ontario--mine, anyway--if you strongly recommend that the accord not be ratified without improvements and insist that the government be responsible to the people and call for a free vote in the Legislature.

It appears that little consideration was given to the people of Canada during the Meech Lake bargaining session. We are unnerved at the prospect of yearly first ministers' conferences entrenched in the Constitution. We fear that these conferences will become a forum for constitutional amendments that continues to exclude the citizens of Canada from the process. In addition, these conferences will cause enormous hardship to the volunteer organizations. Year after year we will have to commit volunteers' time and money, all of which are in short supply, to monitoring the conferences.

In conclusion, we have misgivings about the haste to strike a deal to bring Quebec into the Constitution. The Meech Lake accord will have far-reaching effects. If it is ratified as it stands, we will indeed be taking several giant steps backward for Canadians.

Mr. Chairman: Thank you very much. In particular, I thank you for the additional comments which were not in the written part of your brief. I think one of the comments we have made with a number of people is that I suppose in this kind of setting one always feels one should be giving a terribly learned sort of paper. I think it is important, especially talking about the Constitution--which is, after all, the expression, in a sense, of the lifeblood of the nation--that there is nothing at all wrong with a good dose of emotion and feeling in terms of underlining why a particular view is being strongly put forward, so thank you for that.

I open questions. Mr. Allen and Mr. Eves.

Mr. Allen: I sensed in your last remarks a little ambivalence about some consequences of the democratic process, that while, on the one hand, one wanted full participation, one did not want it too often, because it was awfully demanding. There may be something in that that we need to reflect a good deal about as we get into this kind of year-in, year-out constitution-making and building. I do have the sense that I think you have that it could make the whole business rather trivial. If you think of the consequences of constitutionalizing every problem we have got in the country, everyone will want to have that issue embedded in the Constitution. What is our Constitution, then? Perhaps we go back to the old British sense that everything is constitution, all precedent counts, you just simply live out of your past and that is where it is at, which would be a very interesting and ironic turn of events for those who would see--

Mr. Breaugh: No, thanks.

Mr. Allen: For those who see a rational process of recourse to the courts and so on, it would become a very interesting national experiment, to

say the least. Whether it would be a beacon for the nations is another question.

Let me just ask you a couple of fairly straight questions. Are you familiar with the existence of Quebec's Charter of Human Rights and Freedoms and aware that it is probably a stronger statement than either the Ontario Human Rights Code or the national charter itself in a good many respects? If you are familiar with that, would you be as concerned as you have stated that there might be some subordination of equality rights, and so on, through the Meech Lake accord, knowing that in the distinct society that kind of a charter does prevail and would have impact on the courts?

Mrs. Perry: It has impact on the courts in Quebec. What worries us is section 16 in the Meech Lake accord which states that two charter rights, multicultural and aboriginal rights, will not be affected by this distinct society. The courts will have to interpret that other charter rights will be affected by the distinct society.

Mr. Allen: And your conclusion, I gather, at this time is that section 28 of the charter somehow would be adversely impacted by the "distinct society" concept not only in Quebec but outside Quebec and impacted by your exclusion from section 16, all that taken together.

Mrs. Perry: Yes.

Mr. Allen: So you are really more concerned, as I hear you--if I could phrase it the way in which the legal adviser to Persons United for Self-Help did just a few minutes ago--that when the premiers went back to the Langevin Block and tried to get all political about this and responded to some criticisms, that they did it in a very piecemeal kind of way, that the "distinct society" question was not so much an issue for you as the very partial and limited way the premiers tried to redress some of the criticism but did not go far enough in including women, for example, and may have left out others, such as the disabled, as well, and their rights. Is that a fair way of saying it?

Mrs. Moxon: Yes. It appears to us that they have set up a hierarchy of rights. As far as we are concerned, the equality rights should supersede everything. They have to be the overriding rights as well as no discrimination. All of those other rights should be equal.

Mr. Breagh mentioned before that he could envision a lot of competition among those other rights, but they should all be equal as well and stand on their own. They are not mutually exclusive. They should have that equal sense in the charter, be named and be there, so that there is no ambiguity.

Mr. Cordiano: Could I have a supplementary on that?

Mr. Allen: Yes. OK.

Mr. Cordiano: With respect to section 16 in the accord, if you look back at the charter and the multicultural heritage in section 27, the legal experts have clearly stated that section 27--multicultural heritage--is an interpretive clause; it is not a rights-granting clause. Including it in section 16 does not bestow any additional rights. There are no rights there to begin with.

Mrs. Perry: No, but the courts have to interpret what is before

them. Section 28 is an interpretive clause as well.

Mr. Cordiano: No, section 28 is very clearly reaffirmation of rights that exist. This is what the legal experts who have come before us have said. Section 15 and section 28 clearly grant rights, and section 27 does not. There are no more multicultural rights that exist in our Constitution. It is simply an interpretive clause.

Someone who is claiming to be from whatever ethnic group will not have additional rights over someone from another ethnic group.

Mrs. Perry: We are not saying they will have additional rights. The point is the court has to interpret what is there in the Constitution, and if the court sees those two sections, whether they be interpretive rights or substantive rights, are not going to be affected by section 2 of the Meech Lake accord, they will have to interpret that all the other rights will be affected by that accord.

Mr. Cordiano: But only if you grant that section 27 grants rights. There are no rights being granted there; it is an interpretive clause which will--

Mrs. Perry: I think you are trying to draw me into a legal debate. I do not claim to be a lawyer; I never have.

Mr. Cordiano: Neither am I, but I am just saying what the legal experts have told us--

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Mrs. Perry: I have been listening to the legal experts as well. I hear the legal experts saying our rights are endangered. I think it is a complete folly to ratify an agreement with so many holes in it, and so many flaws and an agreement that the people of this country do not feel comfortable with. We should deal with all the problems in the accord, all the problems in the Constitution now, and put it right.

Mr. Allen: I have a further question. On page 3 you say, "If the 'opting out' clause becomes law in the Constitution." One of my concerns about that concern is that the opting out clause, whether it is there or not, would function anyway by virtue of the fact that the spending power related to it is in areas of exclusive provincial jurisdiction or areas of joint jurisdiction between the federal and provincial governments. So if opting out is built into the structure of the Constitution as it presently exists, and the section on spending power in the Meech Lake accord says what it says, it is really only saying what is already there, and what has been the practice in Canadian federalism.

I know what you are concerned about. It is the consistency of programming across the country. But is the objecting to the opting out possibility really a feasible way of getting at what you want to get at?

Mrs. Moxon: Yes, Mrs. Perry, in her part, did say that actually what we object to is the fact that we do not have the accessibility, the quality, the universality and the comprehensiveness added to those. If we could feel they were a part of it maybe we might have more confidence in that particular clause.

I do know, at this time, the provinces sit down and negotiate the federal programs, etc. I do believe this opting out clause had some limitations, too, in certain areas. It would not touch things that are already in existence, as far as I know.

What I think we felt is that we could have had confidence in the federal government being able to provide a fairly consistent program across the country which would meet the needs of all Canadians, not in a patchwork of situations across the province. Just as Saskatchewan created medicare and then the federal government took it on and said: "That is a great idea, let us take it across the country. Let us do that. It is great." It should have been compensated for having such a wonderful model program.

This will not happen any more. The provinces are going to be on their own, doing their own thing. They will get their money from the government, but there will be no accountability either. We cannot go to the federal government and say, "You gave the province money for this program, and the federal government does not care what happens any more."

I see that happening with the provincial government giving it to the municipalities for education. There is no accountability whatsoever. It gives the money to the boards of education. They spend it. The province does not really care how it is spent. It is the accountability aspect of it. It is what we are hoping to see created that will be consistent that we can understand and believe in and move across the country. Why must disabled people be treated differently in each province? Why must child care be different all across?

We are lucky here in Ontario. We are marginally luckier than any other provinces because of the amount of money we have. That is our sense of it. It is the national aspect of it that we really feel is so important.

Mr. Allen: I hear what you are saying. I guess my concern is does that mean that what we want in Canada is a unitary state with only one level of government? That is the only way you would get that kind of unity across the board, otherwise you begin sharing powers. Once you begin sharing powers you are into diverse politics and interactions that make it extremely difficult.

I think what you are trying to tell us, and what various groups have been trying to say to us when they addressed this question is they would not only like to see that the federal power has specific standards but that there be somewhere in the Constitution, or in the understanding of the nation, a specific set of criteria laid down as to what those standards are, such as were imposed in the Canada Health Act, which required universality, accessibility, public funding and that series of criteria. It was not just that the federal government had the power, but that a certain kind of federal government be there that had a commitment to those things.

I guess the question is, can the Constitution guarantee that kind of government. The people of Canada elect, as they have just done, a government that is prepared to institute a day care program across the country that really does not have those kinds of commitments. Where is the line between the politics and the Constitution in all that? I guess I am still having a bit of trouble just getting a fix on how we do what you want to do.

Ms. Perry: In bringing up the opting out, we are just trying to point out all the errors in one section. The wording is very vague, to have

"reasonable compensation" if programs are "compatible with the national objectives." The word "compatible" is weak. Our worry is that if they can opt out in addition to having all these weak and unspecific requirements on them, plus receive compensation, who is going to benefit? We do not think the users of the service are going to benefit, because they are not going to be compensated. The government is going to be compensated.

In the area of child care, for instance, if the wording of the objectives is so unspecific that it does not rule out informal child care services, the government could put all its money into setting up a registry of informal child care people. That is not going to meet any of our personal objectives of having quality child care.

So if we have all these weak words that lack definition, and on top of that an opting-out clause, we just feel that the federal government has absolutely no clout when it comes to insisting on standards or any kind of level of care being given in any program.

Mr. Eves: I just have a couple of short questions.

I note the chairman's remarks that a good dose of emotion does not hurt. A good dose of common sense does not hurt either, and I think you have provided both in your submission here today.

With regard to the ambiguous language, going back to the point Mr. Cordiano made, you are quite correct, I believe, in that there are experts on both sides of this issue who will give you two totally different interpretations. If there is any doubt whatsoever, I think you are quite right, we are entitled to have that clarified, and the time to clarify it is before you ratify it.

Mrs. Perry: Absolutely.

Mr. Eves: That almost goes without saying, I would think. If every one of the 11 first ministers tell us that was their intent, I do not see why this is going to jeopardize the deal.

When Professor Baines was here, she indicated that for legal reasons she might prefer an all-encompassing amendment which says that all rights under the charter supersede or have primacy over the Meech Lake accord. Would you be happy with such an amendment?

Mrs. Perry: We could support that, yes.

Mr. Eves: The other question I had for you was with respect to national programs. We were told that initially the wording was "national standards" in the draft and it was later changed to "objectives." Would you be happy with the word "standards" as opposed to "objectives?" Do you think that would satisfy your concerns or are your concerns much deeper than that?

Mrs. Perry: We think that "standards" would be a much better word, yes. We would like to see the word "compatible" changed as well. We believe "comparable" would be a better word to use in that section. "Initiatives" should be clarified as well. Since it is in child care, no one really knows what initiatives in child care are, because there has been no precedent.

Mr. Eves: One last area that you touch upon is process. I think that is certainly an area that all members of the committee would agree we can work

on with respect to the future. I would hope that if enough people keep on suggesting the idea of the free vote, eventually that will take hold of all committee members.

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Miss Roberts: I will be very brief. Thank you very much for your presentation. As I indicated, it focuses on some very common-sense ways of dealing with the problem.

Just as you have answered Mr. Eves, you are suggesting other wording and that other wording is still open to chance, as you have indicated in your brief, because you leave it to the courts to decide. No matter what word you put in there, no matter what series of words you put in there, no matter how long you make the document, you are going to leave it open to chance, because the Supreme Court is going to deal with it.

Maybe the best thing--and this is heresy, I assume--

Mr. Chairman: We need some heresy.

Miss Roberts: I am into heresy today.

I would suggest that the part with respect section 106A be taken out completely. Would you agree that was the best thing to have done? Why amend it if you can take it out completely and just leave it to chance as we have been for the past 100 and some years?

Mrs. Perry: It could be taken out completely. I think our approach is to try to make the 11 first ministers look better than perhaps they were and to suggest that the accord does have some positive sections to it. We are not suggesting, for instance, today to scrap the whole accord, although many of our members personally feel that would be the best solution as well. We are trying to take the positive approach and perhaps offer other words or other ways to deal with a flawed document.

Miss Roberts: You do not think it would be better if section 106A was taken out completely, that particular change?

Mrs. Perry: If there was still something in place where the federal government would have the power to initiate national programs with standards.

Miss Roberts: You would like to use those words, "programs" instead of "initiatives?"

Mrs. Perry: At the moment, I think the words "national standards" have been clarified by the courts, so I feel comfortable using those words. I do not think "objectives" has been.

Miss Roberts: I would not be as comfortable with "standards" either.

My last question, if I might, is the process, which is the most important thing, because the process is going to continue whether Meech Lake passes or not. What do you suggest?

Mrs. Perry: We do not think Meech Lake should go forward at all. I think we all have to deal with the fact that we have many questions to deal with in our Constitution. We are very new at this. It was only brought in this

decade. We have to spend money on educating the people of this country so they can understand what our Constitution entails. We have to supply groups with resources, both with materials and experts.

The task may look completely overwhelming to start with, but short-term pain brings long-term gain and if we could just deal with the whole thing now and put it behind us so that we do not have to bring it up every year, make changes and make groups hop so that they can ensure that their rights are not being trampled on or they are not being left out again. It is a bad process to even suggest that we can look at our Constitution over the next 500 years and change it as we go along. It should be dealt with now. No other country that I am aware of deals with its constitution this way.

Miss Roberts: Maybe some of these concerns should not be in the Constitution but in other types of legislation. Would that not be more appropriate?

Mrs. Perry: Yes.

Mrs. Moxon: We have also heard the statement that it is looked upon as corporate bylaws and they are just changing them at an annual meeting every year. This is far too important to be tinkering with the Constitution.

Mr. Chairman: Can I just make one comment? It seems each day there are certain themes that emerge that have not necessarily been as prevalent. One of the things Mr. Breaugh touched on earlier--and I am not sure what the answer is, but I just want to share it with you and perhaps get your thoughts--when we talk about national standards or national whatever, it seems to me in this country, especially those of us living in Ontario have to be awfully careful that we do not feel that national and federal are the same thing, that there is a very legitimate role for the provinces to play in defining what is in the national interest. Probably the farther you get away from Ottawa, the more strongly felt that is.

I raise that in conjunction with section 106A specifically, because I keep asking myself, if we were sitting in Victoria or in Edmonton, I think some of the perceptions of what that does--again, whether it was real or not--is that there is protection there for things they would like to do and which they might see as being very progressive and positive, and Ottawa is just too far away and that they do not want to be in a position where they are putting all their eggs in that basket. I guess one of the things we are struggling with is that when we talk, as we do here, about national programs, shared-cost programs in areas of exclusive provincial jurisdiction, we have had over the last many years political discussions among the provinces and the federal government which then led to particular programs.

Provinces have been very concerned at different times about giving the federal government any kind of concrete right of access, if you like, to some of the areas that according to the Constitution are provincial. At the same time, many of us have said that we would like to see certain kinds of broadly national objectives and standards; we use these different terms. I think one of the things we are wrestling with as a committee is that at times one senses there is a tendency, particularly in Ontario, to say we will simplify everything if we let the federal government do it.

I think the answer is going to lie somewhere in the discussion between the two. The point Miss Roberts makes, I suppose, is the one, are we better off leaving that to an ongoing political process which from decade to decade

may be different and may reflect different desires and different norms? Ten or 20 years ago, we would not be talking about child care the way we are today for a whole series of reasons. I do not think we would want to do something that in perhaps 10 or 20 years put everybody into a straightjacket.

In looking at that, would you agree that, none the less, there is a legitimate provincial interest in defining the national will, the national standard, the national objective?

Mrs. Perry: Absolutely. Democracy is a consultative process and I think not just the politicians should be consulted, but also the experts in the area you are talking about, whatever the program is, such as child care or health care, should be consulted completely as well. I cede the point you are making that we cannot give all the power to the federal government to set up the program. I do not want to see that happen either. I definitely want a consultative process all across the board in each province.

Mr. Chairman: A consultative process that, at the end, would lead to some statement of national standards or objectives, but one which was a co-operative process.

Mrs. Perry: That is right.

Mr. Chairman: Thank you very much for joining with us this morning and sharing your thoughts. It has been most helpful. Again, I think there are a number of issues emerging that various groups are bringing forward, but I think everyone who brings the same point forward also brings a slightly different perspective or aspect, which is most helpful to us as we continue.

Mrs. Moxon: Thank you very much for having us. We have enjoyed the experience.

Mr. Chairman: I now ask for Willard L. Phelps, leader of the official opposition in the Yukon. It is a pleasure to have you here, Mr. Phelps. Perhaps I will further identify you as leader of the Progressive Conservative caucus in the Yukon. As you know, the government leader was here last week and another of your colleagues, the leader of the Liberal Party in the Yukon, will be with us, I believe, tomorrow. I think this does afford us an excellent opportunity to get a sense of the views within the Yukon Legislature.

We have received a copy of your submission, along with various attachments, including your presentation to the special joint committee on the 1987 constitutional accord. Perhaps I will simply turn the microphone over to you and you can make your opening remarks and then we will move from there into questions.

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WILLARD L. PHELPS

Mr. Phelps: Thank you, Mr. Chairman. I welcome this opportunity to appear here before you. As you have said, the government leader has been here, as I am appearing today, and the leader of the territorial Liberal Party will be here, I believe tomorrow, as you have said.

What we are trying to get across is that Yukoners are united in their opposition to certain aspects of the Meech Lake accord. Our concerns are

shared by the aboriginal people in many respects and by our colleagues in the Northwest Territories who, I understand, have been appearing before you as well.

Mr. Penikett provided you with a sense of the outrage Yukoners feel about certain aspects of the accord. My focus today will be to look at what we see as some very possible and positive solutions to the problems that confront us in Yukon. We see the proposals as not only realistic but also as extremely minor in terms of satisfying egregious errors in the accord itself. I would also like to advise that on November 16 we debated a motion about Meech Lake--it is in my written presentation--that was unanimously passed.

I would like very quickly to go through the brief I presented before the special joint committee on the 1987 constitutional accord. I will be focusing on the major area of concern in my remarks today, and that has to do with the need for unanimity for us to become a province at all under Meech Lake.

In the brief I presented and am presenting today, in appendix II of the joint presentation to the joint committee, we have six proposed amendments. For the most part, they are extremely minor in nature. To us, by far the most important issue is the proposed clause 41(i) of the Meech Lake accord.

I would like to talk very briefly about the development of responsible government in Yukon because that push for responsible government is something that has been shared by all Yukoners. We have been on a quest since 1898 when Yukon was carved out of the Northwest Territories as a separate territory. Our history with regard to responsible government is one that has until now at least put us far ahead of the Northwest Territories in terms of constitutional development. We had our first wholly elected Legislature in Dawson City in 1909. By contrast, the Northwest Territories, I believe, had its in 1971, so we were a long way ahead.

We now have party politics. We have 16 MLAs in the House representing three major parties in Canada. In 1979, we ended up in a situation where we had effective control of the territory and the Legislature in the hands of our representatives because at that time, the commissioner, who was the head of government, became in effect the Lieutenant Governor of Yukon and we had our first wholly elected cabinet in 1979 and our first government leader in 1979 who had the right, under the auspices of a letter from Jake Epp, to call himself Premier, but that has never in fact happened.

We have a Legislative Assembly in Yukon now which operates on the same basis as the provincial legislatures. We have a cabinet system. We have a Lieutenant Governor in effect. The difference between our jurisdiction and the jurisdictions of provinces lies in the limited areas over which we have jurisdiction. We do not have jurisdiction over many areas of local concern, such as land for the most part, forestry, nonrenewable resources and fresh water fisheries.

I think it is important that the committee understand the strong desire for more responsible government and eventual provincehood. It is quite simple. What we are saying is that people in Yukon ought to have the same rights enjoyed by southern Canadians to make decisions in Yukon regarding matters of a local nature. We feel that officials living in Ottawa have little in common with, and often do not understand, the needs and aspirations of residents in Yukon.

For example, one might ask, what does a person living in an Ottawa

suburb who rides a bus to and from work and spends his day in an office building many storeys high in Hull, Quebec, have in common with a trapper residing in a small town like Teslin or a placer miner residing in a small town like Mayo in the Yukon? How does the average Yukoner ever begin to effectively lobby the system for change or to get his point of view across? How do they relate to the bureaucracy in Ottawa? Not very well. It is almost impossible for a realistic dialogue to occur between our average citizen and the political masters who, when it comes down to it, are the bureaucrats who run northern affairs in Ottawa.

I guess another point we make to people is that the size of the federal government in dealing with matters of a local nature is extremely costly. Whenever we have taken on greater responsibilities, we have done it far more sensitively and at a far more moderate cost than the huge machinery in Ottawa can provide. We can respond on a timely basis to changing conditions in Yukon. We have seen this in issues such as the control of highways, for us to try different kinds of programs to control dust, different kinds of surfacing and so on. We had to wait for years to get regulations changed that were in effect across Canada. In the Yukon it takes a matter of days to meet the realistic needs in Yukon.

These are some of the reasons regional government is better able to meet the needs of the people it serves than a distant national government with regard to matters of local concern. In a country with the size and diversity of Canada, proximity to the people being served is important. As one former Commissioner of the Yukon Territory said, "You can't drive a team of horses with reins 3,000 miles long." For most Yukoners, the question of provincehood for Yukon is not if; it is when.

As Mr. Penikett has already stated, Yukoners have several concerns regarding the Meech Lake accord. These include the right of each province to veto the creation of new provinces, the method in which Senate and Supreme Court of Canada appointments are to be made and the right to attend conferences on the economy and other matters. We are proposing specific amendments to deal with each of these issues and, as I have said, that is in appendix II.

In this presentation, I would like to expand on the issue regarding the right of each province to veto the creation of a new province. As the committee is undoubtedly aware, most Yukoners believe the changes to the amending formula contained in the Meech Lake accord, which now require the consent of all 11 governments to create a new province, will make eventual provincehood for Yukon a remote possibility. We in the Yukon Progressive Conservative caucus have been seeking solutions to that issue and posed this question: How might the 1987 constitutional accord be refined to accommodate Yukon's concerns without impairing the constitutional consensus that has been achieved?

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In our correspondence with the Prime Minister of Canada and in our discussions with political leaders across Canada, it seems there are only two reasons why provinces have a direct interest in whether Yukon might become the next province of Canada. If people sit down and really examine the issue seriously and consider it, why would Ontario or Alberta or Quebec or any of the provinces have an interest in that issue of us finally becoming a province?

We feel there are two things that would justify a concern on the part of

an existing province in Canada. The first thing is that a new province or new provinces would change the amending formula, the amending procedure in the Constitution. We recognize that and we recognize that it was very hard to achieve unanimity on the amendment procedure. You did not even get unanimity when the Constitution was repatriated. So we have looked at that and we have conceded that that is ethically, morally and legally a justifiable concern.

The other thing that we hear over and over again as an area of concern has to do with whether a new province would alter the fiscal relations among governments. Does it mean that the pie would be smaller in effect, that some of the provinces might not get as much in terms of payments from Ottawa, that the richer provinces might be penalized because there is a new province? In thinking about this and working on the issue of justifiable concerns that provinces might have, it is not something that was done overnight; it is something that we worked on with constitutional experts and entered into a dialogue for some considerable time about.

Those are the only two areas that we could see. We cannot understand why, for any other reason, provinces would have any concern at all about the creation of Yukon suddenly as a province. In dealing with those concerns, on page 8 of the brief before the joint committee, we proposed an amendment, a new clause 41(i), which would be "the conferral of equalization payments under section 36(2) and of amending powers under this part on new provinces."

What we are saying is that we would like to see Yukon be enabled to become a province, except for the conferral of the equalization payments and of amending powers. There we can see an argument for unanimity, but we would like Yukon to be assured--and by this amendment it would be--that it would become a province in every other aspect except for those two areas.

It might be said by some that we are proposing a qualified future provincehood for Yukon or that Yukon could not really be a province without participating fully in the amending formula and equalization payments. We would strongly disagree. As we all know, Alberta and Saskatchewan became provinces long before they entered into the resource transfer agreements with the federal government.

From our perspective, the proposed amendment would leave us in a much better position constitutionally than in 1982 as the really important aspects of provincehood could be dealt with bilaterally between our government and the federal government. We recognize the sensitivity that many of the first ministers have with regard to the amending formula. It took a lot of effort and time for the first ministers to agree on the present amending formula, and we are prepared to accept the veto over any change to it.

With regard to the issue of equalization payments, we feel that Yukon would never push to become a province unless the financial arrangements made with Canada were satisfactory. At present we have financial arrangements with the federal government, known as the formula financing agreements. These agreements leave the territories in much better financial shape than would participation in the present system of equalization payments enjoyed by the provinces.

As we negotiate devolution of responsibilities from the federal government, it is safe to assume that we are not going to take on new responsibilities unless the financial arrangements are good. So when we achieve provincial status, it is unlikely that we would even want to participate in the existing equalization provincial payment scheme. It is not

of concern to us because our present arrangements with the federal government are and will continue to be of such a nature that they will be richer than being part of 36(2).

In summary, we have relayed some of the history of the development of responsible government in Yukon to you. We have also discussed some of the reasons that underlie the strong desire of Yukoners for more responsible government and eventual provincehood.

We have provided you with specific amendments which maintain the integrity of the present accord yet are designed to: (1) ensure the territories, like the provinces, respect the fundamental characteristics of Canada; (2) allow Yukon and the Northwest Territories to be sovereign in their own right to the same extent as existing provinces; (3) clarify territorial rights to representation in the Senate; (4) provide equal opportunity to qualified territorial residents in relation to appointment to the Supreme Court of Canada; and (5) ensure that northern Canadians have a say in matters that affect them by allowing territorial government leaders participation in first ministers' conferences.

In conclusion, it is my personal belief that had the territory had representation at the talks that led to Meech Lake, I doubt very much that any of these amendments would not have gone forward. They would all be in place. It is my feeling that we really were victims of neglect.

It has been my observation throughout the years that I have attended various national conferences on the constitutional talks and aboriginal rights that when we have had the opportunity to speak at national gatherings, when we have been able to put our view forward, we have always enjoyed a good deal of sympathy and understanding from Canadians across Canada. Wherever our position was reasonable, we have always enjoyed success in making our views felt and acted upon.

I honestly believe that had we been present at Meech Lake, these amendments would be in place right now.

Mr. Chairman: Thank you very much for giving us, in effect, a summary of the presentation to the special joint committee as well as your other comments.

I think you have raised a number of points that we certainly got into the other day, but you have put, again, a perspective on some of those. I think some of the recommendations you have made are quite pointed and specific, which is very useful to us.

We will start the questioning with Mr. Eves.

1230

Mr. Eves: I think every amendment you have proposed is rather reasonable, if I may say so. It should go without saying that all Canadians, no matter where they reside in Canada, should have equal access to equal opportunity with respect to appointment, be it to the Supreme Court of Canada or to the Senate of Canada. You have drafted a very well considered amendment with respect to admission of new provinces to Canada and one that I think everybody could live with.

On a point of clarification with respect to conferences on the economy

and other matters, you indicate that the territorial governments should be entitled to attend these conferences on the economy and other matters in their own right and make statements but not have the right to vote. With respect to constitutional conferences, you do not add the statement, "and not have the right to vote." I just wanted to clarify whether it is your intention that you should or should not have the right to vote at constitutional conferences.

Mr. Phelps: It is our intention that we would not have the right to vote until there was unanimity with regard to our position at the table.

Mr. Eves: It is refreshing to see that all three political parties are approaching this with the same point of view and the same principles and concerns. Thank you.

Mr. Offer: Reading the amendment you are proposing with respect to clause 41(i), I must admit I am having difficulty in truly appreciating what is being suggested. I say that for this reason. The concern you have raised today has largely to do with the acquiring of provincial status by the Yukon. I am not saying for a moment that it is not related in some way to the matter we are dealing with with respect to the Langevin agreement, but I see it in some ways as something distinct. Indeed, in terms of the amendment you have brought forward, 41(i) is part of the Constitution but something outside of the Langevin agreement.

The submission seems to be, how can the Yukon acquire somewhat of a provincial status? You have suggested this quasi-provincial status. I see it as being couched around the whole question of the amendments, the unanimity requirement. Do you not think that this type of suggestion really brings into play a different type of Canada?

We have provinces and territories. We now have quasi-provinces which may or may not be allowed to take part in some or other form of a conference, may have a vote or may not have a vote, all dealing with the presumption and the underlying theme that I seem to detect, that you see the unanimity requirement as valid.

The introduction of new provinces into this country, I sense from you, may indeed impact on the other provinces and, yes, maybe those provinces ought to have a veto, but this is the way we are going to try to get around it. I am wondering what that says for the future, that we now have territories, provinces, quasi-provinces.

In short, I am sort of sensing that there is possibly an agreement that the unanimity formula with respect to the introduction of provinces is a valid exercise because that can indeed affect other provinces.

Mr. Phelps: I guess you are partly right. I should make it very clear that the proposal we are making is from the Progressive Conservative Party in Yukon. It is not one, of course, that has been brought forward by other parties. They have not really taken a position on our stand on this. But I really believe that the way to salvage Yukon's position with regard to what has happened with Meech Lake is to take a bottom-line position that we can live with and recognize, whatever the arguments might be on the part of anybody arguing on behalf of one or more of the provinces. We have bumped into arguments from premiers about the righteousness of their position of being able to veto the creation of a new province in Canada.

I guess what I am saying, and what we are saying, is that we can see, if

you examine it very carefully, two minor aspects in which a province could be affected adversely by the creation of one or more new provinces. We can only see two things. That is what we are saying. One of them, of course, is that your vote under the amending formula as a province would change. The whole formula changes as you add more new provinces. Instead of 10 and seven, it is 11 and what, or 12 and what, and possibly 13 and what given there are two possible provinces to be created in the future from the Northwest Territories.

What we would like to be able to do is to ensure we have all aspects of a province so that we can go to the meetings as of right, so that we attend all conferences as of right and so that we can proceed solely on a bilateral negotiation basis, gradually take on the devolution of responsible government at our pace and only have to be concerned about our negotiating stance with the federal government. We see a great deal of uncertainty being foisted upon us by the present Meech Lake.

We see a situation with those in Ottawa, and it is a continuous struggle, who do not want us to gain new powers. There are people there who have a vested interest. It is a turf question. If we take over forestry and if we take over lands, there is a whole bunch of people in Ottawa who now devise all the policy, who now have that control and whose jobs depend upon the jurisdiction remaining in Ottawa. We have a terrible fight on our hands.

It takes a fair amount of political will on the part of the federal government to have anything devolved to us at all. The uncertainty raised by Meech Lake is that we are not even sure Ottawa has the authority to transfer areas of jurisdiction to us without consultation with and the express approval of the provinces. That is one area of concern that has been raised by our constitutional experts. It is a moot point. We certainly see Meech Lake as standing in the way of our ever getting to a stage where we have all the trappings of a province except for a vote at the table. That is our concern.

Now you say, "Do we not have all kinds of different things between territories and something different and then a province?" I guess all we are saying is the territories themselves are changing and their participation at constitutional conferences changes almost yearly. We were at the aboriginal conference talks as a right. We attended all the meetings that led up to the aboriginal constitutional meetings. We were able to make our case at the meetings. We had a fairly strong impact on many of the provinces in terms of the lobbying efforts as all provinces enjoy that. We see it as extremely important that we play a full role. We just cannot understand why provinces feel they would have any need to block us from arriving as a full partner in Confederation, save and except for the two minor areas I have expressed to you.

I guess the short answer to your question, if there is a short answer, is that I am saying yes, there is a very narrow area of concern, an area in which provinces ought to have a say. That is really the amending formula. There are the financial aspects too, but we just do not see that as a problem. I just cannot conceive of us coming into Canada as a province in a situation where our financial agreements are not at least as good as they are now. Right now, they are extremely rich as opposed to what many of the other provinces enjoy.

1240

Mr. Offer: Again, from your response, what seems to come back with respect to the unanimity formula is that one of the reasons for the requirement for unanimity is something you have accepted, in fact two of the

reasons you have accepted it, the primary one being equalization, that it does have the potential of impacting on each province. Of course, this is the reason for your proposal to amend clause 41(i) of the Constitution.

Mr. Phelps: Can I come at it a different way to just try to put our side of it to you because maybe we are losing something here. We do not want to be placed in a situation where we have to say to Ontario, or Alberta for that matter: "We want to have control of nonrenewable resources. We want to have a resource revenue-sharing agreement with Ottawa. We want to get some of the revenues from the oil in the Beaufort Sea. We want to take over forestry in the Yukon." We do not feel those negotiations ought in any way to be blocked by a province. We do not see what stake a province has in those issues, whether we run the highways in the Yukon or whether the federal government does, whether we are the ones who make policy with regard to mining and development in the Yukon, things of a local nature, or whether Ottawa does.

What we are concerned about is that we do not want to be placed in a position where any kind of devolution of that sort requires the blessing of each and every province, because we will leave ourselves open to a very simple thing, the possibility of--blackmail is a strong word, but Prince Edward Island might say, "We are not going to let the Yukon become a province and let it take over nonrenewable resources on any terms, no matter how reasonable they are, until we get," whatever it is it wants at the time, or Newfoundland might say, "Until we get more control over fisheries." We do not see that the provinces have a genuine stake in those kinds of issues.

Meech Lake leaves up in the air what kind of power provinces have to block that kind of gradual devolution of responsible government to the Yukon. We want it to be very clear that we can become a full partner in Confederation except for two areas in which the provinces do have a legitimate stake. If that is clear, then we can proceed with our life and move towards that. If it is not clear, we are concerned that we will be in a mess for some time to come.

Mr. Allen: I think all of us, Mr. Phelps, are very deeply concerned about the fact that somehow the territories have been dealt out of participation in their determination with respect to their own future, and I will not elaborate on that.

Your proposal on page 8, I might observe, is devilishly clever because it appears, on the one hand, to allow any province that objected to the conferring of those equalization payment rights upon any new province to object and thereby effectively to stop that happening. At the same time, given how fundamental subsection 36(2) is to Canadian Confederation and our sense of equal rights and full participation in nationhood on the part of all provinces, it is difficult to imagine a province effectively maintaining its opposition for long in the face of the public storm that I think would follow and the pressure that would exist on the federal government, which would raise questions about any province denying what has been a fundamental principle of Canadian Confederation since the Rowell-Sirois report and the aftermath of that great founding of our constitutional future.

I do not know whether you want to comment any further upon that in the light of my comments, but I just make that observation. It is a very clever amendment.

Mr. Phelps: It is an attempt to really focus on the areas where provinces have a legitimate concern. What happens is when we talk to people from the provinces, they say: "Well, there is a whole bunch of waffle up

north. We all as taxpayers have been developing it and so on and we are not sure if we want you people there to become a province." I guess southerners, quite naturally, have not taken the time to consider the issue very carefully. Why would they concern themselves over us having more responsible government? We can do it more efficiently and it is still their resource as much as anybody's.

If you focus on the two legitimate areas, then it becomes quite evident that the equalization part of it, as you have said, would probably fall away very quickly. We come down to one thing: How is a new province or two new provinces going to impact on the seven-10 formula? I think if that was the only area that all parties to Confederation focused on, we would come up with a solution very quickly. I do not see these as really big, major blocks to our finally becoming a province, if it comes down to just those things.

Mr. Chairman: Mr. Phelps, we want to thank you very much for joining us this morning and for providing us with a number of thoughts and ideas and particularly for the specifics of the amendments you have put forward. We will be looking at the broader paper you presented to the joint committee, I am sure, in some detail, but I think you have outlined some avenues here that we had not looked at before. I thank you very much for joining us.

Mr. Phelps: Thank you.

The committee adjourned at 12.47 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, FEBRUARY 23, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Sterling, Norman W. (Carleton PC) for Mr. Harris

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From the Chinese Canadian National Council:

Yee, Gary, President

Ng, Stella, Executive Director

From the Ontario March of Dimes:

Olanow, Joel, Member, Board of Directors

Pearce, Randall, Director of Public Affairs

From the Canadian Jewish Congress:

Finkelstein, Neil, Member, Constitutional Subcommittee

Zaionz, Charles, Chairman, Ontario Region

Bayefsky, Anne, Member, Constitutional Subcommittee

Maldoff, Eric, Member, Constitutional Subcommittee

AFTERNOON SITTING

The committee resumed at 2:02 p.m. in room 151.

Mr. Chairman: Good afternoon, ladies and gentlemen, I see a quorum. We can begin our afternoon session, and if I might call upon the representatives of the Chinese Canadian National Council to come forward, Ms. Della Ng, the executive director, and Gary Yee, who is the national president. We thank you very much for coming and joining us this afternoon. We are in the process of distributing your opening comments.

Mr. Yee, please proceed however you would like. After your presentation, we will undoubtedly have some questions.

CHINESE CANADIAN NATIONAL COUNCIL

Mr. Yee: The Chinese Canadian National Council was formed in 1980 after a racist incident on a television series, W5, The Campus Giveaway segment, where they implied that foreign students--and showing Chinese faces--were taking over the universities, when, in effect, the faces they showed were Chinese Canadians.

Out of that--probably a blessing in disguise--grew the national advocacy organization of chapters across Canada. Currently we have, I think, 23 chapters across Canada in various cities. We are mainly an advocacy organization and because of that we are here to present our views on the Meech Lake accord.

A very brief word about the Chinese Canadian community from the historical perspective: a lot of immigrants came to work on the railway. Right after the railway was finished, the provincial and federal governments began imposing very discriminatory legislation against Chinese Canadians. The infamous head tax, for which we are currently working to seek redress, was imposed right after the railway was finished.

The British Columbia government tried very hard to limit Chinese immigration. There were all sorts of other discriminatory legislation against Chinese Canadians, with respect to professions that they could be engaged in, voting rights, education and all sorts of matters.

Because of this past, we tend to place a very high value on the charter and we want to rely very much on the protection which is in the charter. The charter is consistent with our view of Canada and we are very pleased that the section with respect to multiculturalism is in there. That is definitely part of our view of Canada and, quite frankly, the constitutional accord does not reflect our view of Canada.

We do acknowledge the importance of Quebec. We have a very strong Montreal chapter but it, too, is in agreement with us that there are some very fundamental changes that need to be made to the accord. In some ways, we empathize with Quebec and its search for protection of identity and protection of culture, but at the same time, as I said, our view of Canada is not consistent with the accord's view.

At this point, I will turn it over to Ms. Ng, who is our executive director, and she will have some comments to make on the charter.

Ms. Ng: The first point I want to bring up is the Charter of Rights and Freedoms. The reason we are concerned about it is that we are worried that sections 15 and 28 of the Charter of Rights and Freedoms could be overridden by the provisions in the Meech Lake accord, as Gary mentioned a little while ago.

Since the accord gives express protection to some charter rights, like clause 16 of the accord, which says that native and multicultural rights are not affected by the "distinct society" clause. We are not sure whether that means the other charter rights are not being protected, like the women's equality rights or mobility rights and other rights that are included in the Charter of Rights. Are other individual rights being affected by these provisions? We are not sure about that. Does that mean that women and men could be discriminated against by government actions under the distinct society and the linguistic duality provisions?

Therefore, we would strongly recommend that a provision be added, which states that the Charter of Rights and Freedoms prevails over the accord, and delete clause 16 to remove the ambiguity as to the coverage of the accord.

The second point is that within the accord there is an opting-out clause. The accord allows provinces not to participate in national cost-sharing programs that are compatible with national objectives such as medicare, child care, language and skills training programs, etc. We are really worried that under that provision it is very difficult to have have national social programs that can be entertained by Canadians across Canada.

We do not want to see that. This clause contributes to the regional inequities and inequalities in terms of access to services, and therefore we recommend that the provision that the provinces can opt out of the cost-sharing programs be deleted from the accord to ensure that Canadians can entertain equitable provision of services across Canada.

A third point we want to mention is the whole concept of multiculturalism that is missing in the accord. The concept of multiculturalism has not been included in subsection 2(1) of the accord. In clause 2(1)(a), the concept of linguistic duality of Canada, namely, English-speaking and French-speaking linguistic duality, has to been acknowledged. If clause 2(1)(a) is allowed to stand by itself without a similar clause addressing multiculturalism, when over one third of the Canadian population is neither of French nor Anglo origin, does that mean the Constitution Act is simply not comprehensive enough to tend to the pluralistic nature and needs of our Canadian society? Would the linguistic needs of many Chinese Canadians whose mother tongue is neither French nor English be addressed?

We believe that bilingualism does not embrace all Canadians, but multiculturalism does; therefore, it is of utmost importance that multiculturalism be included in subsection 2(1) within in the accord.

1410

Mr. Yee: I think also, because section 2 refers to Quebec as a "distinct society," that makes it especially important to include multiculturalism in section 2.

As I said, we do welcome Quebec's participation in the Constitution, but we do have some concerns about the reference to Quebec as a distinct society and the affirmation of the role of the Quebec government basically to

implement that concept of Quebec as a distinct society. Does that mean, for example, that heritage language programs may suffer in Quebec or may never come into being? I know currently in Ontario, and especially within Metro Toronto, Scarborough in particular, there is very much debate about heritage language programs. Does Quebec as a distinct society leave any room for heritage language programs?

I think the concept of multiculturalism has to be in section 2 and not mentioned in section 16 of the amendment act because the reference to distinct society may well lead to predominance over multiculturalism. Just as bilingualism is seen as a fundamental characteristic of Canada, so too should multiculturalism.

I also want to address the point of immigration. As I said, in our past, Chinese-Canadians have suffered from a lot of discriminatory immigration legislation. The first attempts were made by the British Columbia government and were struck down based on division of powers, not based on any civil rights argument. Those arguments were not legally available at that time.

The federal government later passed its own discriminatory legislation, but I think we realize that there is more danger in the provinces wanting to address their own needs, their own concerns and pushing for immigration policies which may not be in accord with national policies or which may in effect be discriminatory, perhaps not blatantly in this day and age but certainly more subtly.

If more power is given to the provinces to choose immigration policies to enter into agreements with the federal government, will we see some kind of checkerboarding across Canada of immigration policies? The same with immigrant settlement assistance, will we see checkerboarding there as well? There is a view of Canada which can be promoted through immigrant settlement assistance. I am not sure that you can rely on each province to have its own policies. The settlement services in Quebec, that provision refers to linguistic and cultural aspects. Again, what happens to multiculturalism within this kind of framework?

There is a reference in the Constitution Amendment Act, I guess, to federal paramountcy. It talks about national objectives, but I think the federal paramountcy test is very narrow. Repugnancy is the basic aspect of that test. I think that gives a lot of scope for provincial immigration policies to differ very much across the country and still not be repugnant to any particular federal legislation.

Perhaps in summary, look at the way the accord is drawn up and look at the sections which talk about the charter. For example, section 95B says the charter applies to any immigration agreement. Why does the charter apply to an immigration agreement? Why is there specific mention of that in section 95B and no specific mention of the whole charter applying to the Meech Lake accord or to the amendment act? Why limit the application of the whole charter to just immigration agreements?

Then section 16 of the amendment act refers to nothing in section 2 affecting section 25 or section 27 of the charter, and other sections as well. Again, why mention just some sections? Why put it in section 16? Why is that not part of section 2? Why should not multiculturalism, the charter or the equality provisions be integral parts of section 2 and not just an afterthought?

I think the reference to section 27, which is the multiculturalism provision in section 16, is an afterthought. It is almost like a response to an irritant. I do not think the state of the nation is such that multiculturalism should be seen as an irritant or should be seen as an afterthought. I think the nature of the constitutional amendment reflects that in the way it is drawn up. It is a fundamental flaw. It has to be an integral part of the act and not just an afterthought.

Mr. Chairman: Thank you very much for your submission. You have touched on a number of issues, some of which we have had raised before, but again I think your perspective will give us some different insight as well into some of these issues. We will begin the questioning with Mr. Cordiano.

Mr. Cordiano: Thank you for your brief. You have certainly touched on a number of areas which we have been deliberating on in this committee and we have heard from a number of people. I will not attempt to cover all the areas with you, but I just want to ask your opinion of section 16 and hear what you have to say with regard to that.

With respect to the charter, I have asked other witnesses this question and I am going to continue to ask it because there does not seem to be consensus. I have a great deal of sympathy with the way in which you view the concept of multiculturalism. Certainly, I would agree with the basic premise that you put forward.

Having said that, I think one has to look at the charter and, following from the legal and constitutional experts who have come before the committee and certainly other observers of the Constitution and constitutional matters, looking at section 27, they have all basically said that section 27 of the charter is an interpretive clause. Indeed, it does not grant rights. There are no multicultural rights per se. It is not a rights-granting section or clause. We have this interpretive clause in the charter, which in effect the Meech Lake accord attempts to drive back in, so that there is no dispute about the intention here. Basically, that has been the explanation that has been given to me, and I think some others on this committee will share that.

I just take you back to 1982 when section 27 and the clause dealing with multiculturalism was put in. There are certainly no other rights that have been granted to multiculturalism. The charter speaks to linguistic rights and it speaks to denominational rights in respect of separate schools. It speaks to a number of other equality rights, but it does not speak to multicultural rights. It is only an interpretive clause. I just want to get your views on that.

Mr. Yee: Right. I think there are two brief points here. One is that even though section 27 may be just an interpretive clause, section 1 of the charter is extremely important in terms of reasonable limits and what is demonstrable in a free and democratic society. Section 27 is very useful under a section 1 analysis. I think even though it may not grant substantive rights, it has more importance than it may appear.

Mr. Cordiano: I was not implying that it is not important. I am just saying it is not a rights-granting section. In some of the legal jargon that has been used, that has been indicated.

1420

Mr. Yee: Right. But that is no reason not to put it within section

2. In fact, that is my second point, that section 16 may be worded incorrectly. Maybe it should be the other way around: not that section 2 does not affect section 27, but perhaps section 27 should be used in the interpretation of section 2. Nowhere does it say that section 27 applies to the Constitution Amendment Act.

Mr. Cordiano: That brings me to my next point about section 2 of the Meech Lake accord, respecting the fact that it speaks to subsection 2(1a), linguistic considerations; that is, that we have French-speaking Canadians in Quebec and English-speaking Canadians in Quebec, but not centred exclusively and vice versa, and that this in fact "constitutes a fundamental characteristic of Canada." What it says here is that it is one of the fundamental characteristics; it is not exclusively the only characteristic of this country.

We are getting into language, but we have to deal with the language and the words that are being used. We will have a number of interpretations on what these words mean. The charter is like that. Expressions about "a free and democratic society" are left to interpretation. What does that mean? What are the limitations on that? What do all of these glowing statements mean exactly to a free and democratic society? That is left to some interpretation by the legislators in the various assemblies and in the House of Commons. It is left to legislation. There are a number of things that are not mentioned in the Constitution which we deal with by means of legislation.

Mr. Yee: It is true that it says "a fundamental characteristic" and not "the fundamental characteristic." There are many fundamental characteristics of Canada, but where the fundamental characteristic identified refers to something linguistic, something cultural, I think it is a fundamental flaw not to refer to additional fundamental characteristics along the same lines, such as multiculturalism.

Mr. Cordiano: Certainly, it has been suggested as well that what constitutes Quebec makes it distinct, but part of that distinctness is the fact that we do have present in Quebec an English minority and a number of other ethnic groups. That certainly is the makeup of Quebec today. So when the courts are looking at this, it has been suggested that they also have to take into consideration those fundamental elements in Quebec society. Indeed, it would be part of the overall interpretation.

Mr. Allen: I appreciate your coming before us. I think it is critically important for us in this committee to listen with as open ears as we can to those groups in particular in the country at large who feel that in some way or other any of our constitutional or legal arrangements somehow exclude them or put them to one side or compromise their existence here. I may say I remember very well the university and education-based issues that gave rise to your own lobby group.

Like yourself, we are trying to determine whether in fact this accord does have the negative impacts that some of us fear it might have or whether it does not, and whether our fears are well-founded or whether they are ill-founded.

Let me ask you for starters, does it make any difference for you with respect to your interpretation of the "distinct society" clause and its implication for other minority groups to know that the Quebec Charter of Human Rights and Freedoms has a statement in section 43 that is much stronger than the statement in the Charter of Rights and Freedoms of 1982? It reads,

"Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group."

It is not an interpretive clause. It does not say anything that goes on under this document should not impact adversely on those things. It says there is a positive right there. To the best of my knowledge, that is about as straightforward a statement of that right as exists in any similar document across the country.

Does that kind of information relieve your mind on that subject or does your concern go beyond that as an assertion and a governing principle in Quebec?

Mr. Yee: I think it does go beyond that. Although we applaud Quebec for that clause, it is not a constitutional provision. There are many very high sounding pieces of legislation. We are not suggesting that Quebec is not implementing it or anything, but to see the words there on a piece of provincial legislation does not have the same impact as would the words in the Canadian Constitution.

With respect to trying to assess whether this accord has any negative impact, I am not sure that is the test. You know the old saying about justice not only being done but being seen to be done. In the courts of law, this accord may not have any negative effect on multiculturalism. That may be so; I do not know. But if it means that the concept that Canada embodied in the Constitution is one which concerns a lot of people, I think that issue has to be addressed, aside from the substantive impact.

Mr. Allen: When we deal with constitutional issues, a lot of structures and elements of Canadian life get very much set to one side. Inasmuch as the Constitution tends to deal with the relationships between established political entities like provincial governments, territories, the federal government and their direct and immediate agencies, it would be a major step for us to create something in the Constitution called a council of nationalities or a senate that was based on the multicultural phenomenon of Canada, for example. To take that step would be to move your concerns much more to the centre of the constitutional debate.

Without that, it is difficult for me to see what the status of heritage languages is in the Constitution as distinct from the politics that go on within it and between peoples and groups.

I am asking you whether your sense is that down the road there is a possibility that there would be more than two official languages or that there would be a constitutional entity in Canada that would formally and properly represent the multicultural makeup of the country? With that objective in view, one could begin to focus the debate a little bit more exactly, if you see what I am getting at.

Mr. Yee: You may well be suggesting something new that has never occurred to us. Frankly, we are not asking for heritage languages to be entrenched in the Constitution. We are merely asking for the prevention of the entrenchment of something that could be adverse to the implementation of heritage languages.

Mr. Allen: The implication in vesting groups with other language traditions in 2(1) and 2(12), the "distinct society" provision and the duality clause, is really in effect to give them status as official languages.

Mr. Yee: I would disagree with that. I am sure there could be some adequate wording that reflects bilingualism but multiculturalism. I think within the bilingual framework there is ample room for heritage language programs where the numbers warrant.

1430

Mr. Allen: For example, the phrasing in 2(1a) is specifically with respect to the language groups. One assumes, therefore, that 2 and 3 relate to preserving characteristics around that form of dualism. Those are both official language groups in Canada. I concede there would be some role for another kind of statement or another section that would address multiculturalism, but not that one.

Mr. Yee: You may be right on that count.

Mr. Allen: I am just trying to refine where we move and how we move on those concerns in the context of this document. I think we need to give a little bit more thought to just where that should be so as to avoid some of the objections we are going to get down the road if we start talking about putting it in the wrong place, because the implication would be there.

Mr. Yee: Yes, I see.

Mr. Offer: Thank you very much for your presentation. I will just ask a few short questions. Dealing with opting out, I listened very carefully to what you indicated in your submission, and I want to get a clarification. You are, I would suggest, aware that the whole question of section 106A applies solely to areas exclusively within provincial jurisdiction. Having said that, we have heard from others--in fairness, we have heard concerns with respect to section 106A, but we have also heard that in this country, in these years, section 106A does entrench the right of the federal government to initiate national programs with national objectives in areas of exclusive provincial jurisdiction. Maybe that is not such a bad idea.

Second, this particular section will allow provinces to opt out, as you have indicated, and to receive compensation if they institute their own programs meeting those objectives. What follows is the suggestion that the country as it evolves with respect to these programs is very different and maybe an initiative that Ontario starts might be somewhat different from one that Alberta or British Columbia start, but it would allow the provinces to meet the particular realities of their province and to deal with needs and realities.

My question to you is, where is the concern in giving, first, the federal government the clear right and, second, the ability of the provinces to opt out in those circumstances?

Mr. Yee: This is perhaps getting more into a personal view. Everyone has his own view of how centralist Canada should be or how decentralized it should be. I think it would be safe to say that, in general, we in the organization are not looking for federal control of all these programs, but there are certain programs where we would support national standards. These would not necessarily be very detailed standards but perhaps just minimum standards, which would still give the provinces the freedom to tailor to local conditions.

Mr. Offer: I understand what you are saying, but section 106A talks

about those areas which are now within provincial jurisdiction, not making any change as to what is within provincial or federal jurisdiction. We are talking about that which is now in existence and has been, in many ways, since 1867. In those cases, we are saying, yes, the federal government is going to be given that constitutional right to get into this area, but we are going to give the provinces the flexibility to meet the realities of their particular province.

From your response, I am not hearing that you are necessarily against the section, as opposed to maybe dealing with whether the provinces should have that right, which was in many ways decided in 1867.

Mr. Yee: Except that as a matter of reality the federal government does not need the constitutional amendment to get into those areas. If it controls the purse-strings, it can get into those areas. What this entrenches is a right for provinces to take federal money for programs which may not necessarily meet national standards.

There is a reference to national objectives, but that is rather vague, I would suggest. I am not sure it gives the federal government anything, because the federal government can do it anyway, through its money, and this just talks about money. If it does give the additional power of the federal government being able to initiate its own programs, not on a joint basis with the provinces, I guess I do not really have any policy opinion on that.

Our concern is that this could detract from the establishment of national standards in some areas where we believe national standards would be helpful.

Mr. Offer: I think we are somewhat at an impasse because I still seem to work on the basis that the province has jurisdiction over certain areas and the federal government has jurisdiction over certain areas. Section 106 talks only about areas where the province, not the feds, has jurisdiction and clarifying that the feds have the right to introduce cost-sharing agreements with the province but also giving the right to the province, because it is in an area of exclusive provincial jurisdiction, to say, "Yes, we understand and we like those national objectives, but this is how we should deal with them in Ontario," and Alberta should be able to do that in Alberta, in a more sensitive fashion, meeting the needs of their particular province.

Mr. Yee: I think that sensitive fashion can exist without this section, that the federal government will just impose minimum standards and allow for the tailoring at the provincial level. What this section gives is the right to compensation, which was not there before. In effect, it curtails the use of federal spending power to control joint programs. Currently, without this section, there is no curtailment of the federal spending power. If the federal government wants to say, "We will give you \$2 million if you implement this program," the province cannot opt out. So this does have an effect on federal attempts to use its spending power.

Now that is another policy question: Should the federal government have that kind of spending power for exclusive provincial matters?

Mr. Offer: We are getting into some debate, but I have one short question. You indicate that matters of immigration should be under the jurisdiction of the federal government. We have been told that matters of immigration have been of concurrent jurisdiction to both federal and provincial and it has been in existence since 1867. Are you suggesting that is

where the change ought to be made, because that is outside this agreement? The distinction between federal and provincial powers and the concurrent jurisdiction with respect to immigration is not dealt with in this agreement but many years earlier.

Mr. Yee: It may well be true that is a change that should be made as well, but I think the references to immigration in this amendment further weaken the federal power over immigration, which we do support as a national standard.

1440

Mr. Chairman: Mr. Sterling has a question but I wanted to ask something on immigration, so perhaps I could follow up here. Could it not be argued, though, that all this accord does in terms of immigration is recognize the existing agreements, in effect, the six agreements which the federal government has with the provinces?

I guess one of the things we are wrestling with as a committee is trying to determine what are some of the very clear areas where we can see where some significant change has been brought about. One might argue whether you need that in a constitution. One could say, "If they have been making agreements, why do you need that in the Constitution?" None the less, if it reflects simply practice as we now know it then it may not be harmful.

As I read this and I look at the agreement that Ottawa has with Quebec and with five other provinces, they are all quite different. But it seems to me that built into that is protection--the reference to the charter to ensure that in fact a province cannot impose racial quotas, that mobility rights as set out in the charter still apply so that if you or I came into the country and went to British Columbia, we could go the next day to Alberta or wherever. I am not clear, and I guess my reading of that to this point says it is a moot point whether it should be there at all, but all it does is reflect the status quo.

Mr. Yee: If indeed that is all it does, then we would not want the status quo entrenched.

Mr. Chairman: Which is a valid point. I accept that.

Mr. Yee: And we are pleased that the charter--

Mr. Sterling: My point is in the same area. I do not agree that this is the status quo, because there is a significant difference. Under our present Constitution, provinces have the right to make laws in relation to immigration providing they are not going against federal legislation. So the federal Parliament can say: "Ontario, you have legislated wrongly; we will legislate in the exact opposite direction, and therefore your legislation becomes null and void." That is what section 95 of our Constitution says now.

Mr. Cordiano: No, it does not.

Mr. Sterling: Yes, it does. I will read the section here because I think it is important. Section 95 of the Constitution says:

"In each province the Legislature may make laws in relation...to immigration into the province"--

Mr. Chairman: Can I just note for the record that is from the British North America Act, section 95.

Mr. Sterling: --"and it is hereby declared that the Parliament of Canada may from time to time make laws in relation...to immigration into all or any of the provinces; and any law of the Legislature of a province relative...to immigration"--I am trying to leave out another part of it relating to agriculture--"shall have effect in and for the province as long and as far only as it is not repugnant to any act of the Parliament of Canada."

This does something very much different. What it does under the accord, section 95C, is it allows a province and a federal government to get into an agreement, and that agreement can only be upset if both the government and a Legislature decide to upset it. So you could have, in effect, one government today make a deal with one province and then the next Parliament of Canada could not withdraw out of that deal. In effect, that is what this accord says.

You could have an immigration policy in Quebec or in Ontario or whatever which would really become part of the Constitution and it would be really irreversible as long as the province wanted to hold that card in its hand for ever and ever. I think there is a great danger in that, in that you are taking away from the Parliament of Canada the future power to make and change immigration policy. I think there is a real concern there. I would very much agree that the status quo is fine and dandy, but the accord is not the status quo as far as I can read it, as a lawyer.

Mr. Yee: I share your concerns on that.

Mr. Chairman: It is perhaps something we are going to have to look at in more detail. One might argue that subsection 95B(2) of the accord restates what is there. I guess the other point is just that there is a perception that you have, at the very least, that somehow that does change the rules of the game and therefore you are concerned about what might flow from that. Would that be a fair statement?

Mr. Yee: Yes.

Mr. Chairman: Mr. Sterling, do you have another question?

Mr. Sterling: No. I just wanted to point that out because I think it is a very important point. I think it also points to the fact that on questions of confusion, some of the members of this committee have felt that there should be a reference on some of those questions to make it clear what in fact the intent of the document is. That is the point I wished to raise.

Mr. Chairman: Thank you very much for coming this afternoon, for presenting your paper and for helping us through some of the questions as we try to find our way through the accord. We very appreciate it.

Mr. Yee: Thank you.

Mr. Chairman: I would now ask the representatives from the Ontario March of Dimes, Toronto chapter, if they would be good enough to come to the table: Randall Pearce, the director of public affairs, and Joel Olanow of the board of directors. I believe that somewhere there is a brief which has been passed out. If you would like to proceed in whatever fashion you wish to present your submission, then we will follow it up with questions.

ONTARIO MARCH OF DIMES

Mr. Olanow: My name is Joel Olanow, and I am a member of the board of directors of the Ontario March of Dimes. On behalf of my organization, I would like to start this afternoon's presentation by thanking the select committee on constitutional reform for providing us with this opportunity to meet with you.

The Ontario March of Dimes came into existence in 1949, originally under the name of the Ontario Poliomyelitis Foundation. Originally Ontario-based only, within two years we had become a national organization and by 1956 our current name came into being.

Our original objective was to beat polio. With the development of the Salk vaccine in the mid-1950s, this dream had become a reality by the early 1960s. New cases of polio after 1960 were all but eradicated. Once this had been accomplished, the Ontario March of Dimes did not choose to become a vestigial organization. Rather, our mandate was broadened to assist all physically disabled adults living in Ontario. Our objective is to assist these individuals so that they can live a meaningful and dignified life.

Stemming from this mandate, the Ontario March of Dimes is active in communities right across Ontario, 16 in all. Every year, thousands of volunteers assist us in serving adults with physical disabilities. Over the past 10 years, we estimate that over 100,000 volunteers have given freely of themselves to give hope to over 700,000 physically disabled adults who live in our province.

Through our regional offices, we provide a number of important programs including, amongst others, the provision of assistive devices, be they wheelchairs, canes, crutches, artificial limbs--in short, adaptive equipment of all kinds to maximize the independence and mobility of disabled persons.

We provide community services. We have a skilled staff who organize group action, consult on issues and initiatives in areas as important as housing, attendant care, human rights, transportation, public awareness and public education.

We provide a camping program for the severely disabled, an opportunity for individuals who are confined to institutions permanently and require 24-hour attendant care to have an opportunity to spend a few weeks in a recreational setting without compromising their care requirements.

We provide vocational rehabilitation through 11 centres throughout the province to provide work assessment, training and placement counselling. We offer microcomputer training, offering many severely disabled their greatest opportunity to communicate, to learn a job skill, to provide them with an educational and entertainment forum using the most up-to-date software programs.

We also have a post-polio program designed to assist those who had the disease many years ago and are dealing with recurring symptoms which we now recognize may occur in old age.

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As mentioned, we work with thousands of disabled individuals every year. Over half are forced to live on less than \$10,000 annually. Only one in 10

enjoys the luxury of living on a budget of more than \$15,000 a year. Our goal is simple: to provide basic yet fundamentally important assistance so that disabled persons can contribute as active and independent individuals throughout a society which also belongs to them.

Ours is a voluntary agency, and the brief we are about to present was prepared by volunteers. I regret that none of the members of the committee that prepared the report are able to present their findings to you this afternoon. However, I would like to introduce Randall Pearce, director of public affairs for the March of Dimes, to present the highlights of our committee's review. Before Mr. Pearce takes over, I would like to thank you once again and express our sincere wish that you will listen to our views and give them their due consideration as constitutional reform progresses.

Mr. Pearce: I would like to join Mr. Olanow in thanking the committee for this opportunity to present the position of the Ontario March of Dimes on the status of constitutional reform as it is impacted by the Constitution Amendment, 1987, or the Meech Lake accord.

The purpose of a constitution, as noted by Professor A. W. Johnson, is to proclaim and define nationhood, to proclaim and define the rights and freedoms of the citizens of the nation, and to establish a system of governance which will contribute to the flourishing of the nation, its citizens and its identities, and in the doing of it, to strengthen the bonds of nationhood.

The great accomplishment of the Meech Lake accord is in its contribution to the flourishing of Canada's identities by reintegrating the province of Quebec into the constitutional family and by affording our French culture a special status. The Ontario March of Dimes joins the many groups and individual Canadians in welcoming Quebec's return to the constitutional fold. However, the Ontario March of Dimes is concerned that the Meech Lake accord, as it now stands, may be at cross purposes with the constitutional mandate. We are concerned that the agreement may negatively impact upon the equality rights of certain citizens and diminish the ability of the federal government to nurture strong bonds of nationhood by limiting the efficacy of federal spending powers.

In so far as the Constitution Amendment, 1987 proclaims and defines the rights and freedoms of some Canadians, it calls into question the status and rights and freedoms of other Canadians. The Ontario March of Dimes is concerned that the rights and freedoms of the disabled citizens of this province shall be called into question by the courts if the present act is given passage without amendment.

The struggle for constitutionally entrenched freedom from discrimination for disabled persons is well documented. As a result of the hearings held across Canada in the summer of 1980, the Harp-Joyal committee firmly established that physically disabled persons are regularly victimized by intentional and unintentional acts of discrimination.

The battle for the inclusion of equality rights for disabled persons in section 15 of the Charter of Rights and Freedoms was not easily won. The government has consistently shown reticence to view disabled persons as deserving of the same standard of equality rights as those of other disadvantaged groups. Once again, through the Meech Lake accord, the constitutional debate has ignored the precious equality rights of disabled persons. The Ontario March of Dimes believes it must be eternally vigilant to safeguard those rights.

We are concerned that section 16 of the Constitution Amendment, 1987 may possibly be interpreted so as to limit equality rights in some way. By setting out a principle of interpretation which says that multicultural and aboriginal rights are not affected by the new section 2 provisions--recognition of (a) the English and French cultures as a fundamental characteristic of Canada and (b) Quebec as a distinct society--the basis is laid for a potential legal argument that other individual rights guaranteed by the charter, including equality rights, are affected. It is not possible to determine what effect such an argument might have in a future court case. We can only say that such an argument might be made.

We therefore recommend that the Constitution Amendment, 1987 be amended through consultation between the federal government and the provinces to ensure that equality rights and other individual rights currently guaranteed by the charter not be diminished. We do not believe that the intent of the new accord was to diminish these rights, but we are concerned that the language chosen might have this effect, depending upon the context in which a constitutional case arises.

The failure of the federal and provincial governments to respond to the concerns of many organizations across Canada regarding this possibility has only served to heighten these concerns. If equality rights and other individual rights currently protected by the charter are not affected, why not say so in the language of the agreement?

The Ontario March of Dimes joins the Income Maintenance Co-ordinating Group for the Handicapped and the Coalition of Provincial Organizations of the Handicapped in voicing concern over the conspicuous absence of clear language regarding the equality rights of disabled persons.

The purpose of a constitution, to return to Professor Johnson's definition, is not only to proclaim and define the rights and freedoms of the citizens but also to strengthen the bonds of nationhood. The true expression of these bonds of nationhood lay in the programs which might have been established or made national in scope as a result of the spending powers of the national or federal government.

The Ontario March of Dimes believes that the Constitution Amendment, 1987, if passed unamended, may seriously impair the ability of the Constitution to foster strong bonds of nationhood by altering the spending powers of the federal government. Furthermore, we believe that, as a group, persons with disabilities rely on these national programs to a disproportionate extent and may suffer loss of benefits under the proposed constitutional amendment.

The federal government plays by far the largest role at present in the income security area, comprising both social insurance and income supports. The government of Canada administers and funds old age security and the guaranteed income supplement, unemployment insurance, family allowances, the Canada pension plan and 50 per cent of social assistance through the Canada assistance plan. The provinces administer and fund the other 50 per cent of social assistance, workers' compensation, additional income supplements for seniors and other comparatively smaller programs.

The federal share of financing for income security programs has remained near the 85 per cent level for the past two decades. As well, the federal government is largely responsible for income taxation, which includes several deductions, exemptions and credits that are really part of the support income

program. If the picture is taken in total, the federal role in income security is much greater than the provincial role.

The provision in the Constitution Amendment, 1987 which directly affects income maintenance and support programs for persons with disabilities is section 7, which would add a new section 106A to the existing Constitution; it reads as follows:

"The government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives."

The Ontario March of Dimes shares two different but overlapping concerns about this provision with the Income Maintenance Co-ordinating Group for the Handicapped: (a) a weakening of the federal role in national social programs and (b) a failure to establish a clearly defined and accountable model for federal-provincial co-operation in this area. Both of these concerns relate to the uncertainty of the language used in section 7 and to the differences or interpretation which can be expected to arise.

The Ontario March of Dimes has concerns with four terms used in section 106 of the Constitution Amendment, 1987.

1. Reasonable compensation. The government of Canada has produced a document entitled "Strengthening the Canadian Federation" on the constitutional reform, which says on this point, if the provincial program or initiative is compatible with the national objectives, the province will get reasonable compensation. In effect, the money that the federal government would have contributed to the shared-cost program in that province. So the federal government seems to interpret reasonable compensation as equal compensation, but a court may take a different view. Section 106A also leaves open the question whether there can be a federal deduction where the nonparticipating province falls short of the national objectives in some way.

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2. National shared-cost programs: What is a shared-cost program? Is it confined to conditional grant programs such as the Canada assistance plan, or does it also include block-funded programs such as those covered by established programs financing or programs where there is an effective but not explicit provincial contribution such as is the case with deductions, exemptions and credits under the Income Tax Act?

3. Initiatives: While "program" in section 7 clearly denotes public sector involvement, "initiative" does not. "Initiative" suggests that provinces may pursue policies through means other than government programs so that as long as those initiatives meet the objectives of the national shared-cost program, federal funding will be available.

The use of the word "initiative" suggests that instruments which are quite diverse may qualify under section 106A. These instruments may vary greatly. To use employment equity for disabled persons as an example, provinces might simply ask that employers follow employment equity recommendations. They might also offer tax incentives to affirmative action employers or just launch an advertising campaign which encourages employment for persons with disabilities.

It could be that none of the policies would satisfy the desired standards of the national shared-cost program, yet they should be policy initiatives that could be compatible with the objectives behind the federal objective. Provinces which adopted any one of the above strategies would therefore qualify for federal compensation. The Ontario March of Dimes is concerned that this will lead to nothing more than a patchwork of social programs with very little in common.

4. Compatible: It is unclear within the present text of the Meech Lake accord what standards will be used to evaluate which initiatives are compatible with the national objective. It is true that in English the word "compatible" may mean "accordant, consistent, congruous," but it is also true that it may mean "capable of existing together." In fact, the only meaning of "compatible" in the French language is "capable of existing together."

The Ontario March of Dimes is concerned that the citizens of this province with disabilities will have no assurances from the federal government that the provincial program following a national objective will resemble that objective in any way.

In respect of the foregoing, the Ontario March of Dimes submits the following recommendations to the Premier's select committee on constitutional reform for its consideration:

1. That nothing in the Constitution Amendment, 1987, affect section 15 of the Constitution Act, 1982.

2. That the words "or initiative" be deleted from section 106A of section 7 of the Constitution Amendment, 1987.

3. That all cost-shared programs for which provincial governments receive reasonable compensation from the federal government are deemed to be reviewable by the Charter of Rights and Freedoms.

4. That section 7 of the Constitution Amendment, 1987, be amended to ensure that it contains wording which clearly points the federal government to attach conditions which will entitle Canadians to at least some federally prescribed minimum conditions of access and quality of service for cost-shared programs before reasonable compensation is received by a province.

We hope that these recommendations, in addition to our written submission, will be of use to you in proposing amendments to the Constitution Amendment, 1987, that will be agreeable to the federal government and to all of the provinces.

Mr. Chairman: Thanks very much for that summary of your presentation and also for the specific recommendations. I wonder, just for the record, if I could correct one point. I think there were two references to this being the Premier's select committee and I do need to underline that this is a select committee of the Legislature and not of the Premier (Mr. Peterson). I think there is an important distinction to be made there which--

Mr. Sterling: I will go along with that.

Mr. Chairman: Thank you. I knew Mr. Sterling would--

Mr. Breaugh: That remains to be seen.

Mr. Pearce: Our apologies, Mr. Chairman.

Mr. Chairman: That is quite all right.

Mr. Breaugh: They may be more right than you are.

Mr. Chairman: We will begin the questioning with Mr. Breaugh.

Mr. Breaugh: As hard as it may seem to most Canadians, this really is the first opportunity where the public at large has had a chance to state their opinion and concerns about this. It may seem strange since it is almost a year since the accord was struck, but it is true. I think we are getting into areas where all of us are into new ground here, over the use of words and the placing of different parts and whether that has ramifications.

I would like to explore for a minute what I perceive to be a real concern and test the waters a little bit on some other things here. I want to make this distinction: My view is that everybody has said that nothing in this accord takes away any rights you have under the Charter of Rights. It does not seem to matter how many times people say that; it has no impact on the public at large because everybody comes back in here and says, "You took this word out of here or you mentioned this group and did not mention us."

Is it paramount that we attempt as best we can to nail that down? It may be by means of an amendment although an amendment to this accord would also go to court and be subject to interpretation by a court later on, or it may be by means of a reference. But whatever the technique that is used, is your primary concern that you did not lose, or the people you represent did not lose any of the rights that came in the charter in 1982 and that they are just beginning now to get recognized through various court decisions? Is that your primary focus?

Mr. Pearce: That is certainly our primary focus with regard to equality rights. Perhaps what I should emphasize, though, is that it should be embodied within the language of the amendment. What first brought our attention to this matter was the difference between the draft text and the final text of the document. On May 28, the draft text came out without any of the equality groups or equality rights provisions mentioned. On June 3, lo and behold, we have aboriginal and multicultural rights included and disability rights or the rights of disabled persons conspicuously absent. So we feel that in a court of law there might be some ground for a justice to interpret that as meaning that the authors of the agreement had meant to impact negatively upon the rights of people with disabilities.

Mr. Breaugh: This might turn out to be the only occasion in the history of the free world when politicians have been accused of using too few words, because this one is certainly under attack for the words that are not there every bit as much as for the words that are there.

My concern, frankly, is that in basically all of what you have had to say, the general thrust of your argument is that if that is correct and the courts uphold that you did not have any of your rights from the charter removed by any of this, your other problems are basically resolved because it will be people going to court basically over a violation of their rights under the Canadian Charter of Rights that says, "This program in Newfoundland does not give me the same rights and freedoms as the program in Ontario." Somebody will challenge and go to court over that matter, but it all hangs on whether they actually have the legal right or not.

Some of this leads me to my final question which is that I am a little

concerned now that people have identified what they perceive to be a problem and then moved to draft a solution. We are beginning as a group to get some sense of how drafting a constitution and constitutional amendments is not quite as straightforward as you might have thought initially.

I am a little concerned, for example, that your fourth recommendation appears to me to say that until someone gets that one in hand and the federal government attaches conditions to a particular program and that is established in a court of law, no reasonable compensation is received by a province, because a literal reading of that fourth recommendation you have made really does say that until the courts have ruled that everybody's rights have been upheld, no compensation can be received by a province.

What that would mean in practical political terms is that if Ontario wanted to do something this year and somebody decided to challenge that, three years from now when the Supreme Court is through with it, the program may or may not be approved but people will do without that service while the courts make their decision. I do not think that was your intention but that is what you said in the recommendation.

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Mr. Pearce: Taken literally, recommendation 4 does point in that direction. However, what we would really like to see included is more or less the yardstick and have it embodied within the agreement so that it is not necessary to test every program in a court of law. Within the agreement there would be some standardized measure of what will match up to the national objective, of what will qualify as an initiative, and then under what criteria compensation will be granted and what powers the federal power has to withhold compensation for a program which, frankly, does not come up to snuff.

Mr. Breaugh: I will conclude on this. What I am concerned about a little bit now is that you view this from one perspective. I understand what you are trying to say, how you are trying to put your words together and how you are trying your best to ensure the people you represent are not diddled by this process.

The problem I have is that when we go to finalize something like this, I have to be mindful of all the other players that are out there. While you may see this as an opportunity to ensure that people who have some disability of some kind get proper programs from one end of the country to the other, there may well be another group out there that does not care about that at all; it is not its concern. But they may look at this kind of recommendation and say, "Boy, I wish they would put that in there because every time the government of one of the provinces decides to run a program and we do not like it, the way to do this and scuttle it is to challenge under this kind of provision before the Supreme Court of Canada."

I wish I was talking just theoretical politics here, but I am not. There are groups in Canada now that are using the Constitution of Canada to challenge, before the Supreme Court, programs of government, of trade unions, of universities and of schools. If the American experience holds true for us and it probably will, under constitutional challenges almost everything that happens in society will sooner or later find its way before a Supreme Court judge. They will argue over the specific words that have been used in constitutional amendments to stop programs or to cause programs to be started. I am getting a little concerned that we do not mess up this process, that we understand what is important and go to secure those changes, in whatever

format we can, and that we do not spend a whole lot of time muddying the waters with this kind of problem. Do you get the problem we are hung up on?

Mr. Pearce: I do understand your point. I am approaching it from another angle and saying: "Let us try to avoid any litigation or any cases before the Supreme Court. Let us try to set some guidelines that provinces will be mindful of when they are formulating programs so they do not run into this kind of challenge on an ongoing basis."

Let us take a national program, for example, the Trans-Canada Highway that goes from coast to coast. Without nationally prescribed guidelines, perhaps Newfoundland can build a gravel road and Ontario will have a 10-lane freeway. That is the case, that the road does narrow.

Mr. Breaugh: I have been on that road and that is exactly what happens.

Mr. Pearce: It does narrow and broaden, but it should at least connect directly and all of that sort of thing so that there would be a guideline for building that road and the purpose of the road remains the same as it goes from province to province. I do not think these are concerns that are particular to persons with disabilities. I think they do relate to all sorts of federal-provincial programs.

Mr. Breaugh: To conclude, that is an interesting example you have chosen because it is probably one that makes the argument both ways. If you set a national standard for building a road and you say the road must follow that national standard from one end of the country to the other, you could not do it because of the different terrains you go through and the different climates you go through. The engineers will soon tell you that you cannot build the one standard, that you will have to build to a local standard so that when you go through northern Ontario, the roads will have to be built in a different way than they will through the southern part of the province. It is one of those occasions when you would have to apply different standards as you move through different terrains.

Mr. Pearce: I guess you would look at what is the purpose of the road. Those would be the guidelines you would set.

Mr. Chairman: In following along, there are two fundamental things, in a sense, that you have addressed this afternoon. One I call the equality aspects. I think that has come up on many occasions. It is certainly one of the compelling arguments that one must be concerned with if in any way, shape or form, the accord was going to affect charter rights.

On some of the other aspects of this accord, it is probably fair to say that different ones among us might say, "Do you really need that?" For example, maybe my personal preference with section 106A would be: "The feds and the provinces have always argued over shared-cost programs and always will. Why not just leave it out because we are going to be arguing." There is a political process regardless of the Constitution that is still going to be at play.

None the less, it is in there. I wonder if a number of the programs we may be concerned about are not necessarily programs that are, in quotes, in exclusive provincial jurisdiction. You mentioned earlier a program relating to employment equity. One could argue from the federal government's perspective that there are all kinds of aspects of employment which are its, and that in

negotiating a lot of those programs, section 106A would not apply, that it would be just the usual hard-boiled process of the governments getting together to try to hammer out an agreement of some sort of other.

It seems to me, though, that perhaps what is at the root of some of the provincial concerns that have led to section 106A being included, because I do not think it is just Quebec that had a concern about that, is that somehow there was an overriding unilateral right that the federal government could march into any area of provincial jurisdiction and simply, through its spending power, clobber the provinces into going along with the program whether it was needed or not in the view of that province.

I think we need to be careful in addressing that, keeping in mind that it is the provincial viewpoints and federal viewpoint through which we have come to delineate national programs and national standards in many areas, not simply in areas of exclusively provincial jurisdiction, but in a whole series of other areas where we now have different kinds of shared-cost programs.

In terms of the thrust of some of the comments in the criticism of section 106A, I would be concerned that it is tending to lead us towards: "Whatever Big Daddy in Ottawa says, that is the way it must be. Only they are all seeing and all knowing in terms of the nature of that program." When one looks at a number of programs, especially in a variety of social service and employment-related areas, for the province which tends to be implementing a lot of those programs it is critical that it have a fundamental role at the table in determining those programs. In fact, there may be a very valid reason why a province might wish to opt out because it is doing a program which it may perceive to be better or at least somewhat different because the needs of its population is somewhat different.

Would anything I have said be something that in principle you would object to or would you agree there is a key provincial role in those programs?

Mr. Pearce: It is very difficult for me to speak for my committee at this time.

Mr. Chairman: I was not--I do not mean to--

Mr. Pearce: I can perhaps make one comment. Perhaps section 106A has received the attention it has received from our group and many other groups because once this amendment to the Constitution is passed, it becomes very difficult to reamend the Constitution. So Meech Lake, regardless of other matters of content, has received a great amount of criticism simply because people are saying: "This may be it. How do we change it and get unanimity after this thing is passed?" So it may be a disproportionate criticism that is surrounding section 106A.

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Mr. Chairman: This gets back sometimes, I think, to a fundamental Ontario reaction to a variety of problems whereby we tend to feel in this province, in a way that is quite different from people in other provinces, that Ottawa somehow is better, more important and should be doing more things; whereas as you move farther away from Ottawa, I think other provinces get very concerned about that kind of power. At the root of some of that concern is perhaps a valid principle that if we have a Constitution that says certain powers are provincial and certain powers are federal, do we easily accept that the federal government should be able to enter those provincial areas willy-nilly because it has the spending power?

I realize that some of this gets somewhat theoretical, but I think it does speak to some fairly basic elements of our confederation.

Mr. Pearce: I certainly cannot speak to the feelings of those people who live on either one of our coasts, but from the perspective of disabled persons I might say that there is a greater confidence in the federal government simply because of the strength of its spending power and the level of involvement in those areas which affect disabled people most significantly--that is certainly the income support area, that 85 per cent level of involvement which I mentioned earlier--and that perhaps the federal government is better able to guarantee their interests.

Mr. Chairman: But that would not be affected by this, would it?

Mr. Pearce: What programs would be subject to it is a very unclear area right now. We could all of a sudden have provincial versions of all of these programs, as proposed in the Meech Lake accord. It is difficult to know right now.

Mr. Olanow: I think one point we want to make very clear is that the recommendations we are providing are not intended to suggest that we are trying to say what proportion of power should be allocated centrally to a central government in Canada and which provincially. What we want to ensure is that when those powers are so allocated, the population we are representing do not get caught in the cracks somewhere, as Ottawa and Toronto and Ottawa and every other capital city in Canada decide exactly which programs will be brought to bear and how they will be brought to bear.

We are talking about a sizeable population of a national population, and yet a population that does not have a voice in direct proportion to its numbers. When we are talking about initiatives and needs, if you think back to basic psychology, Maslow's needs hierarchy, the people we represent are very low down on that scale, and the initiatives we are talking about are sometimes perceived in a more sophisticated, "self-actualizing" manner.

We are talking about survival for these people, and that is where the passion in this argument really lies. That is why it is so desperate to the people whom we are representing and the committee that wrote this report on their behalf that this be clear to us.

Mr. Chairman: I think that is a very important statement that we have seen in terms of a number of groups that have come before us: how people get left out, and whether it is by commission or simple omission does not really matter if you are the person who has been left out. If anything else has happened in these hearings, I think that point has been underlined. It was underlined this morning when the Persons United for Self-Help in Ontario organization was here and was making similar points in terms of being left out and therefore your having to react after the fact to things which may very definitely affect the welfare of your members.

Mr. Elliot: Can I ask a supplementary with respect to equality rights to Mr. Breaugh's first question? I got the flavour that, with respect to the development of the accord as it now stands, it might have been hindsight that you were quoting. If section 16 were not there, you might not be here today addressing the equality rights section.

Mr. Pearce: No. The Ontario March of Dimes has been consistently concerned with equality rights for disabled persons, and we are not simply

making a constitutional argument here. I think we are making a very human argument, saying that in all aspects of legislation dealing with human rights, disabled persons should be included there; and yes, we would be here regardless of section 16.

Mr. Elliot: That is fine.

Mr. Allen: Could I just ask a question in that connection? The way you phrased it was that, having noted that some groups were omitted from section 16--and I guess you were notably referring to women and the handicapped, which are the two other groups that have most consistently made this argument--you said that then the courts will ask why they were left out.

Of course, then some fairly eminent lawyers will tell the courts why they were left out, and the lawyers will say that they were left out because the sections that are included in section 16 are of an entirely different status in terms of their phrasing and their placement in the other documents, whether it is 1867 or 1982, and that the two that were included were not rights-conferring articles, they were simply interpretive clauses saying that other things in the Constitution, when it comes to interpretation, must be understood to be in conformity with a certain consideration of multiculturalism or of aboriginal rights.

The other two items that have been omitted, these lawyers will say, were substantive clauses. The one on male-female equality rights was a straight out assertion which included in itself at least a "notwithstanding" initial language which would appear to give it priority over many other things in the charter.

Second, the mentally and physically disabled references are in the equality section, which again is a straight, clear, definite and uncontrovertible declaration of right which is not interpretive and which indeed has been a clause that, since coming into force, has been utilized as a measure of a good deal of other legislation. A lot of provincial and federal legislation has had to be amended in order to come into conformity with it, and therefore it is impossible to imagine that any court would act in such a way as to take another section of the Constitution and use it to undermine or diminish the equality rights that are referred thereto, notwithstanding the fact that total equality has not been achieved in Canadian society to date. What is your response to that line of argument?

Mr. Pearce: I certainly follow your line of argument.

Mr. Allen: It is not mine. This is what has been--

Mr. Pearce: Traditional, whatever, borrowed. I certainly follow that train of logic, and my response to it is, should we leave all of the loose ends? I certainly do not mean to overburden the Constitution with a lot of clauses, but can we not simply suggest, for example, our first recommendation, "Nothing in the Constitution Act, 1987, affect section 15 of the Constitution Act, 1982," quite simply, and not leave it up to lawyers to argue the merits of the rights of disabled persons? And even though rights of disabled persons were not included in 1867 and were tangentially included in 1982, by the time we get to 1987, should they not be more in the forefront?

Mr. Allen: Tangentially?

Mr. Pearce: Well, you have certainly pointed out that they have a lesser stature than aboriginal or multicultural rights.

Mr. Allen: No, I did not. I indicated that they were in section 15, which was an absolute conferral of a basic right along with the other fundamental and more historic phrasing around race, national or ethnic origin, colour and religion. They have joined all of the classic definitions, defined groups against whom discrimination must not be waged.

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Mr. Pearce: Then perhaps we should just reference the entire amendment in 1987 to the Charter of Rights and Freedoms of 1982 and that would certainly solve our problem.

Mr. Breaugh: Another convert, one by one, day by day.

Mr. Chairman: Thank you, gentlemen, very much. We really appreciate your dealing with our questions in a frank and open way. We are searching for some avenues, some routes, some ways of resolving a whole series of matters that seem to touch upon this accord, and we appreciate your presentation and appreciate your thoughts and comments. Thank you again.

Mr. Pearce: Thank you so much.

Mr. Chairman: If I might now call upon representatives of the Canadian Jewish Congress to come forward: Neil Finkelstein, a member of the constitutional subcommittee; Anne Bayefsky, also a member of the constitutional subcommittee; Eric Maldoff, again a member of the constitutional subcommittee; Les Scheininger, the national honorary legal counsel; Charles Zaionz, the chairman of the Canadian Jewish Congress, the Ontario region; and Manuel Prutschi, the national director of community relations. I hope I have named everyone who is here. We would like to thank you very much for coming. We have a copy of your brief.

Mr. Breaugh: I think we have been outflanked.

Mr. Chairman: I think we are making a presentation to your committee.

I am not sure who is going to act as the spokesperson, but perhaps whoever is could identify herself or himself and we will proceed with your presentation and follow it up with questions.

CANADIAN JEWISH CONGRESS

Mr. Zaionz: Mr. Chairman, let me begin. I am Charles Zaionz, chairman of the Ontario region of the Canadian Jewish Congress. Let me thank you for receiving us today and thank the members of the committee.

I will not conduct introductions, since you already have, save to say that Mr. Maldoff is seated at the end of this table, Mr. Scheininger is off the end of the table and Mr. Finkelstein, Professor Bayefsky and our staff person, director of our joint community relations committee, Mr. Prutschi.

The Canadian Jewish Congress has for many years submitted briefs on those matters of concern to the Canadian community generally, and this is another instance where we feel that it is important for us to be present and to submit a brief.

I will not review for you the history or the aims or objectives of the Canadian Jewish Congress. They are included in the initial paragraphs of the

presentation, and the biographies of the members of our constitutional subcommittee are included at the end. You can simply refer to them at your leisure.

I will turn the meeting over to Mr. Finkelstein, who will present the position of the Canadian Jewish Congress on the Meech Lake accord.

Mr. Finkelstein: Mr. Chairperson, honourable members, free and democratic principles are predicated upon majority rule, and that is that the majority elects our lawmakers in Parliament and, to the extent that the government retains the confidence of those elected members, the government remains in power. That principle is the cornerstone, one of the cornerstones, of our society.

At the same time, our free and democratic society recognizes that a government which is acceptable to the majority for its continuation has to be governed by safeguards to protect the minority. That is a major Canadian Jewish Congress concern, it is a major Canadian concern and it is there that the balance lies, the balance between majority rule, democratic rule, and the protection of minorities.

Parliament and the provincial legislatures responded in 1982 by enacting a Charter of Rights to strike a balance. They retained both levels of government, retained their jurisdiction generally, but with a withdrawal of power in certain narrow areas: in the areas of fundamental freedoms, in the areas of legal rights and in the areas of equality. In those areas, Parliament and the legislatures decided that the arbiter should be the courts.

Even there, even in the Charter of Rights, there were two great limits imposed in order to effect that balance. The first was section 1 of the charter, and I think that is very germane to the discussion we are going to have today. Section 1 of the charter provides that any infringement of a charter right is nevertheless saved if it is a reasonable limit, prescribed by law, which can be demonstrably justified in a free and democratic society. So if the majority, as represented by the crown in the usual case, can demonstrate that a restriction is reasonable and demonstrably justified, it will be saved; and to flip it around, if the crown cannot show that it is reasonable, if it is unreasonable or unjustifiable in a free and democratic society, only then can the court strike it down.

Parliament and the legislatures went further in striking the balance and they reserved to themselves the authority, pursuant to section 33, to override judicial decisions even if a court decided that an infringement was unreasonable or was unjustified. Pursuant to section 33, by simple enactment, the Legislature can override a judicial decision about fundamental freedoms or legal rights or equality rights.

It is against that background that, in the Canadian Jewish Congress's submission, section 2 of the Meech Lake accord contains basic flaws. It is going to be our position that, far from not impacting upon charter rights, the Meech Lake accord, both in section 2 and in the provisions it has with respect to the appointment of judges, can have a serious impact upon charter rights, and we would disagree very strongly with those who take a contrary view.

First, section 2 does not speak of equality. It speaks of inequality; it speaks of linguistic minorities and majorities. It does not speak in terms of bilingualism; it speaks in terms of majorities and minorities distinguished by language.

The second thing that section 2 says is that it is the role of the Quebec government to preserve and promote--and I would highlight and underline the words "and promote"--Quebec's distinctiveness. That, in our submission, is a clear direction to the courts that it is Quebec's responsibility to preserve distinctiveness and that that is a responsibility which can be preserved by unequal legislation.

I would give as one example the one that is always given, and that is the Quebec signs case, French-only signs. I would think that the Supreme Court of Canada may well strike down that provision. It has been struck down by the Quebec Court of Appeal, and I would suggest to this committee that there is a very good chance that, if the Meech Lake accord were in force at the moment, that would be a direction to the court to interpret section 1 of the charter, to interpret reasonableness in a constitutional sense, in accordance with the dictates of section 2. That is what section 2 is for. It is there to interpret the charter. It is there to interpret all of the Constitution. It is there to interpret section 1, and it is there to describe what reasonableness and demonstrable justification mean.

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In that connection, I would draw to your attention two provisions that I am sure have been brought to your attention on many occasions to date. The first is subsection 95B(3) of the Meech Lake accord, which is in section 3. Subsection 95B(3), the proposed amendment, says that the Canadian Charter of Rights and Freedoms applies in respect of any immigration agreement. What that indicates is that when the drafters of Meech Lake were drafting this, they knew how to protect the charter from the impact of provisions in here. They knew how to do it and they did it in subsection 95B(3). I would also direct you to section 16, which you were talking about with the previous presenters. Section 16 also indicates that when the drafters of Meech Lake wanted to protect the charter or certain parts of it, they knew how to do it.

It is that silence with respect to section 2 which, I suggest, the courts are going to take to heart. They are going to be interpreting section 2 and they are going to say if section 2 was not to affect charter rights, it would have said so. The legislators said so in the immigration area and in section 16, but they did not say so with respect to section 2. Accordingly, we apply section 2 to the fullest extent of its terms, that is, that it goes to define the whole Constitution and it goes to define how you interpret the charter and it goes to define how you interpret section 1.

Essentially, we make three recommendations with respect to distinctiveness/duality. The first is at page 6 of the brief, that section 2 be amended to indicate that, as with immigration in section 95B, the role of the courts in interpreting and applying the charter has not been altered or affected. That is the first recommendation. Be explicit. If, as people say, section 2 is not to affect the charter, then let us say so.

The second recommendation is that section 16 be repealed and that clause 2(1)(a) be amended to add a nonexclusive list of fundamental characteristics. There is more than one fundamental characteristic in Canada. If what is already in clause 2(1)(a) is a fundamental characteristic, then let us list some of the others, like multiculturalism, which is in section 16, aboriginal rights, which is in section 16, equality rights of all Canadians and specifically women and other groups, which should be included and is not in section 16, and fundamental freedoms, which are a fundamental characteristic of Canada but are not included in section 16. They should be included in clause 2(1)(a).

Our third recommendation with respect to distinctiveness/duality is that subsection 2(2) should be amended to provide that all governments have the obligation to preserve and protect and promote this expanded list of fundamental characteristics.

The Canadian Jewish Congress makes submissions with respect to two other areas: the Supreme Court of Canada and immigration. The Supreme Court of Canada is the ultimate arbiter of social disputes settled through legal proceedings, so it is the ultimate arbiter of relations between governments and it is the ultimate arbiter of relations between government and individuals. It has particular responsibility for the charter.

In our submission, you cannot look at distinctiveness/duality without also looking at the Supreme Court of Canada appointment procedures. The Canadian Jewish Congress had no quarrel with the principle of provincial involvement in the nomination process. However, we do have grave concerns about the rigidity of the formula. Under this formula it is very possible that at some point, in fact it is likely that at some point there will be confrontation and there may well be a deadlock. I am sure you have been told before that there is no requirement for a list of names. You can have a list of one name, and that can cause a deadlock or a confrontation.

Under the accord, the federal government can choose with respect to six of the seats from any of the provinces. There is a lot of flexibility there, but with respect to the three Quebec seats, as it is written at the moment, the accord allows for the possibility of Quebec submitting a list of one name, take it or leave it. Take it, confrontation; leave it, deadlock.

Our submission, as set out at page 16, is that all the provinces be allowed to nominate qualified candidates from all the provinces. Then the three judges from Quebec would have to be nominated from among the Quebec bar, but any province could nominate somebody from among the Quebec bar. That will give the process flexibility. If the concern is to have provincial input, this would allow for provincial input. If the concern is to prevent a deadlock, this will prevent a deadlock because if one province presents a list of one, the others will not. It also allows national input into a national institution.

Our second recommendation with respect to the Supreme Court of Canada is that there be a formal mechanism for breaking deadlocks. In our submission, if our first recommendation is accepted, it is highly unlikely that there will ever be a deadlock, but to provide for the possibility that there might be, we submit that there be a formal mechanism for breaking deadlocks.

The third area that we make submissions on is immigration, at page 21 and onwards. Under the Meech Lake accord, there is a possibility of 11 immigration departments, and this can delay immigration and delay the admission of refugees. Our recommendation is that there be a specific federal ability to expedite the entry of immigrants according to federal criteria, and that be made specific in the accord.

As well, there is a guarantee in the preamble that Quebec will receive a share of immigrants equal to a proportion of the total. That may have implications for federal power to set overall national immigration and, again, we would suggest that there be explicit powers in the federal government to set national levels where there may be a conflict.

The third submission is with respect to something that is in the preamble. It is agreed that there will be a federal withdrawal in Quebec from

the provision of reception and integration services. This can lead, in our submission, to a generation of provincial rather than Canadian identity and an uneven provision of services in the provinces, so our submission is that the federal government retain its past role in providing reception and immigration services.

Our last submission with regard to immigration is, as we understand it, the Cullen-Couture agreement is a narrow set of principles and that a wider set of principles be promulgated.

Subject to any questions you have, that is a synopsis of our brief.

Mr. Chairman: Thank you very much. I can assure you that we will have some questions. That was very thorough. I know you have summarized the major points, and we thank you for the brief itself which we can look at in more detail. I will begin the questioning with Mr. Offer.

Mr. Offer: Thank you very much for your presentation. I must confess it goes into a great deal of complexity with respect to the agreement, and on the basis of that, I have a couple of questions. I have seen the summary, and I was wondering if you might be able to help me with respect to your summation points 2 and 4. The reason I ask for help in that respect is because in your summary point 2, you seem to be couching section 2 in terms of a rights-giving section, whereas in your summary point 4, section 2 seems to be couched in terms of its being of an interpretative nature.

Of course--and I know you have touched upon this--we have heard submissions by others, for instance, by Professor Hogg, who has indicated that section 16, in dealing with sections 25 and 27, is dealing with sections of an interpretative nature. Section 2 is also of an interpretative nature and not of a substantive or rights-giving nature. I am trying from your presentation to come to grips with your summation points 2 and 4, one of which seems to say that section 2 is an interpretative clause and the other that it is of a rights-giving nature. I am wondering if you can expand upon that.

1550

Mr. Finkelstein: Yes. Let me do it as simply as possible. Section 2 is an interpretative clause, but that does not mean that it is not substantive as well, because an interpretative clause provides that you interpret something.

If the charter sets out rights, freedom of expression, equality guarantees and legal rights, and then section 1 provides that those rights may be limited by reasonable limits and section 2 goes to interpret what "reasonable limits" means and expands those limits so that section 1 will save more infringements of rights having regard to section 2, then what you have done by interpretation is you have cut back on rights because section 2, as we read it, says, "Give more weight to legislative judgements."

In saying that, you are cutting back on the protection of section 1 in the charter because the impact of section 2 will be that those rights will interpret more narrowly what the Legislature does and the deference to the Legislature will be greater.

Mr. Offer: You are suggesting obviously that section 2 is an interpretative clause or provision.

Mr. Finkelstein: That is right.

Mr. Offer: Are you suggesting that sections 25 and 27 might also be looked upon as interpretative clauses, not of the charter? Are they also of an interpretative nature?

Mr. Finkelstein: Section 27 on its face says that the charter is to be interpreted in accordance with multicultural principles.

Mr. Offer: The reason I ask that is that, again with respect to your summary, you ask that clause 2(1)(a) be amended to add a nonexclusive list.

Mr. Finkelstein: Yes.

Mr. Offer: I am wondering if you can carry on with that suggestion because, of course, we are hearing from a number of groups that are saying, "Well, no matter what we talk about, how we determine what section 16 is or how section 2 is to be used, we think that we should be added in section 16." I am wondering how this nonexclusive list could be phrased in terms of a Constitution, in terms of an amendment.

Mr. Finkelstein: It is done all the time. If you look at the opening words of section 91, for example, it says effectively that Parliament shall have power to "make laws for the peace, order, and good government of Canada" and "not so as to restrict the generality," and what follows is a list.

With respect to the charter, in the BC motor vehicle reference, Mr. Justice Lamer said that the legal rights in sections 8 through 14 could simply have been followed upon section 7 as a nonexclusive list, "The following are protected," and "notwithstanding the generality," etc., and what follows is that list. That could certainly be done.

I think Ms. Bayefsky has some additional comments.

Ms. Bayefsky: If I might go back to your first question, I think it is overly simplistic to say that section 2 is simply an interpretative provision. I think you can interpret the Ontario separate school funding case to say that there are certain substantive results which are possible as a result of section 2 of Meech Lake.

Without going into a great deal of detail, there were two possible ways the Ontario separate school funding case suggested that other provisions of the Constitution could override charter rights. One is potentially by showing that another part of the Constitution constitutes a fundamental part of Confederation compromise and the other would be to expressly permit certain distinctions via other parts of the Constitution.

Now it seems to me that you could interpret Meech Lake to use and enhance legislative powers by assisting in the definition of a given piece of legislation in a way which would permit it to be found to be intra vires. In other words, you could save legislation by using section 2, by saying that by use of its purpose it could constitute a fundamental part of Confederation compromise.

Second, you could also use an interpretative provision such as section 2 to assist in a determination of whether a specific power-granting provision of the Constitution does or does not expressly permit a given distinction. To simply say it is only an interpretative provision--it can be used to interpret the purposes of legislation and therefore to aid in a finding that it is in fact intra vires.

The other point that should be made is, as an interpretative provision, you can say that section 2 would certainly have an impact on other interpretative provisions like section 28. So the fact that section 16 is limited to only certain interpretative provisions creates, if not a hierarchy of rights, certainly a hierarchy of interpretative provisions. As my colleague suggests, in so far as those interpretative provisions then go to define the scope of rights, a hierarchy of interpretative provisions will in itself have an impact on the scope and definition of other charter rights.

Mr. Offer: Of course, from what we have heard with respect to section 28 it is not that clear type of interpretative provision. Section 28 deals with rights with respect to the final point you have made and, as such, is something different in nature, different in substance from section 25 and section 27 and section 2. These are interpretative clauses and they are read in conjunction with other things, but they do not convey rights as such.

As to the matter you bring forward with respect to your nonexclusive list, I think what you are dealing with is, or I sense it is, something of a rights nature. I am wondering if, from the submission you are making, that maybe section 2 is being changed from that which you have already indicated as being an interpretative section to a rights-giving section.

Ms. Bayefsky: To put it another way, to define a right, to define the powers in the Constitution Act by reference to the purposes set out in section 2 will help determine the scope of legislative powers. I do not agree with the submission that it is only an interpretative provision in so far as your comments seem to suggest. I think it may--we do not know finally--but it may have wider ramifications. It certainly has those ramifications via section 1 and it is the interpretation of limitation clauses on rights.

I do not think it is clear at all that section 28 is a rights-granting provision. In fact, women of Canada heard just the opposite only five or six years ago. It strikes me one cannot have it both ways. Five years later, it is suddenly a rights-granting provision. It has not been so far interpreted that way in the courts. It seems to enhance section 15 vis-à-vis sexual equality, to perhaps strengthen the requirements for section 1 vis-à-vis section 15 sexual equality rights, but other than that I do not think it has further effect.

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Mr. Maldoff: If I may just add a comment, my professional deformation is to be a lawyer, but I hate the mysteries of law so I will try to deal with this in terms that I normally understand. I think this distinction between substantive provisions or rights and interpretative provisions is a distinction which is very interesting for all of us to discuss and really not one of very great importance.

If we were to forget about Meech Lake and just have one amendment to the Constitution, it is that henceforth the Charter of Rights shall be interpreted in case of doubt in favour of the government. I would venture to say that is highly substantive and we would not be sitting in our chairs right now, we would be standing on them.

When we look at the charter, it is open to a considerable amount of interpretation. We are seeing a lot of litigation that is keeping many of us in our profession very occupied full time and quite well off to boot. We are seeing litigation about, for example, is language protected by freedom of

expression? Are films protected by freedom of expression or are films just the same as selling ashtrays and not really a form of expression?

We are seeing debates right down through virtually every one of these charter rights as to its extent, its scope, its meaning, how far it applies. We are all aware of the abortion debate right now. Where does life begin? All of these questions are substantive charter questions which are determined on the basis of interpretation. So when we come in with Meech Lake and start to say, "Now we are going to interpret the Constitution in light of certain new principles," that has a substantive effect.

That is the point we are bringing forward here. We think this has a substantive effect whether it is an interpretative section or not, and we would venture to say that the people who signed the Meech Lake accord were well aware of the fact that it had a substantive effect, because otherwise it would be very hard to explain why they put in subsection 2(4), which says nothing in section 2 derogates from the rights, powers and privileges of government. Clearly, some people sitting in that room, and more than one of them, were concerned that section 2 had a substantive effect on rights, powers and privileges.

We get our rights in a variety of ways. One of them is through interpretation and therefore this distinction really, to us, is not very salient at the end of the day. To answer your second question, do we seem to be adding a list of substantive rights by proposing a nonexclusive list to be added to subsection 2(1), what we are saying is if we are going to interpret the whole Constitution, including the charter, in light of certain things that we consider fundamental to this country and we are going to direct the court when it reads subsection 2(1) that the court shall interpret this, the Constitution shall be interpreted in each and every case in light of subsection 2(1).

The question we would put is, is that the only thing that the court should consider? You would say, "Perhaps the court can consider other things, too." But if we are going to direct in our Constitution that the court must focus on certain things, and we are here before you today to say that we think it should also focus at the same time on our multicultural character, our commitment to fundamental freedoms, our commitment to equality, our commitment to aboriginal rights, and let the court deal with all of those together as it goes through, just as it always has and should. But to suddenly recast the Constitution and say there is a hierarchy now--there are certain things that have to take priority; the others, well, you can deal with if you want--that is what disturbs us.

We say if we are going to interpret the Constitution of Canada, interpret it in light of the values that make Canada what Canada is.

Mr. Sterling: I would like to thank you for your presentation. I find some of the arguments intriguing and fresh and new.

One very small point that I would point out in your brief is that both of our territories were in front of us and you talk about picking judges from all the provinces, I assume you include the territories as well when you are talking about that. One of their principal beefs was that you could not be from the Northwest Territories and be appointed to the Supreme Court of Canada. I am sure your amendment, in terms of having the provinces submit names from anywhere, would include the territories.

Mr. Finkelstein: That is correct.

Mr. Sterling: As I hear different briefs from different groups on this particular matter, having lived through the Bill 30 debate and having been the only member of the Legislature to oppose that bill, because I consider the charter the most important part of our Constitution, our laws and our system, I get concerned when our political leaders try to tinker with basic concepts by trying to divide out different groups and start to deal with different rights for different kinds of groups.

I am also concerned, in terms of this accord, where they are going to continue to have constitutional conferences. I think my concern in that area concerns the politics of the day, as I believe it was in Bill 30, because now in our province, politically, the Roman Catholic population is 41 per cent and this Legislature clearly discriminated in favour of that group voluntarily. It concerns me in terms of the continuing pressure by various groups and various interests who affect our political leaders and change the basic structure of our country. Do you have that same concern about the continuing desire of our political leaders to tinker with the Constitution?

Mr. Finkelstein: The Canadian Jewish Congress submissions are directed at what we believe to be the three most difficult and flawed parts of the Meech Lake accord. There certainly may be other problems, but if we can come away from this committee having persuaded you that there are at least problems in these three areas, basic fundamental problems, then we will consider that we have done our job. That is not responsive to your question about whether or not something else is a problem. It may well be. But the Canadian Jewish Congress's most basic concerns are with respect to the three areas which we have brought forward in our brief.

Mr. Sterling: I guess my concern was in 1982. I do not like section 33 in terms of what it does in terms of equality across this country. I see the Meech Lake accord as a further example of when the leaders get together and they make a decision, they also weaken the charter again.

Mr. Finkelstein: Sir, if Meech Lake is any indication of what is going to come out of constitutional conferences, then we would have to agree with you.

Mr. Breaugh: I am awed by the brain power that is with us this afternoon, so I will try to exploit you because we will never get this kind of legal advice for free again.

Mr. Finkelstein: We all work cheap.

Mr. Breaugh: This is free, is it not?

A number of us have gone at this vexing problem that you have identified as one of your three main concerns. I think you made the case that no matter what words we put here in this accord, where we place them and whether we consider them to be interpretative or not, when it goes to court people like you are going to say, "Notwithstanding all of what their intentions were, the words are there, this is how we view them and this is how we want to pursue our argument."

I would contend that something must be done that establishes the relationship between that Charter of Rights which people thought they had and this accord. You have suggested amendments. Normally, that would be the

process that we would use. I want to point out to you that this is not, by any means of the imagination, a normal process. In reviewing the work of the joint committee federally, one of the things that becomes obvious is that the traditional parliamentary tool of moving an amendment did not work there and it is unlikely to work here.

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Moving the amendment is no trick. We have got the words supplied to us now by half a dozen different groups. Putting them on the table in this room is not a problem. Getting them out of this room is the big problem, the first hurdle. Then you have to get them through the big room upstairs, the Legislative Assembly. Then you have to get them through all the other chambers in Canada, and that is a monstrous task.

Given all the parliamentary devices that could be used to simply not put the amendments, not have that debate--some Premier would just say, "The game is off. The rules were we would not take amendments, so we do not want to hear what Ontario has to say." For all intents and purposes, the amendment process is a nonstarter for most of us.

We are left then with the choice of doing what will happen inevitably and that is putting it off to the court. Do you see that is being a viable alternative to amending the process?

Mr. Finkelstein: Are you speaking of a reference, sir?

Mr. Breaugh: Yes.

Mr. Finkelstein: Our position is that anything that will render this more certain in the sense that the charter is unaffected by Meech Lake is a good thing. If a reference will do that, then our position is that that should be done. It should clearly be done.

What we would do is we would point out the drawbacks of a reference, as you have pointed out the drawbacks of the amendment procedure. The drawbacks of a reference are at least twofold. The first is, you get the answer to the question that you ask and it is--

Mr. Breaugh: With lawyers that is always a problem.

Mr. Finkelstein: It is a problem with everybody. I have been to a few question periods. It is very difficult to draft a question today that is going to cover all future situations. That is the first problem.

The second problem, and I alluded to this in my principal presentation, is that you cannot look at section 2 in a vacuum. You must look at it in connection with the judicial appointment process. If you have a court today say that the relationship between the accords and the charter is so-and-so, and you then have in the fullness of time provincially nominated judges, judges who might be appointed from a list of one, who are going to go with that in concrete cases, you might find the answer that you get in the reference distinguished away or emasculated in some other way. So those are the drawbacks to the reference procedure.

Having said that, let me reiterate that anything that would make it clear that the charter is unaffected is a good thing.

Mr. Breaugh: OK. I want to deal quickly with the other two main points that you had, not that I want to give them short shrift or anything. I would put to you that I am less concerned about the appointment of judges to the Supreme Court than you appear to be. I think most Canadians probably would take the position that that has some potential in there for danger, and I think we should be mindful of that, but is it less dangerous than the current process, whatever magical process we have at work currently, where appointments are made all of a sudden?

The public does not quite know--the people in my riding do not know--how this happens. I do not know how this happens. Not that there is any partisanship involved, but it always seems to me that, by and large, a Liberal government seems to find the most eminently qualified Liberals from across Canada and appoints them, and a Tory government provides the most eminently qualified Tories. Now a shift from that kind of a process that is misunderstood and is wrong, as I have put it, to something which is done out in the open, I do not see as a bad thing.

I appreciate that there is potential down the line for this thing to go wrong, but I do not share the same concern that you have about that matter, nor do I really about the immigration matter. I am ashamed to say--and we are admitting this too often regularly--not very many of us knew that the provinces had immigration agreements with the federal government. I, myself, just had a chance to read them today. I did not know such documents existed.

As I looked through them, by and large, all of the existing agreements between provinces and the federal government contain virtually the same thing. They go about it in a slightly different way and some into more detail. The one between Quebec and the federal government, for example, is the most detailed of them. But again, having read those documents, I do not find much to concern me there. An abuse of what is contained in the accord about immigration would concern me, but going from an existing process to what is suggested in the accord does not seem to me to be an alarming step.

Do you care to comment on either of those two points?

Mr. Finkelstein: I would like to comment on both. In so far as the Supreme Court of Canada appointments are concerned, without making a comment about whether current procedures are political or not political--everyone will draw his own conclusions--but as a student of constitutional law, I will say that I, in reviewing constitutional decisions from the Privy Council on forward, have not seen any evidence that the federally appointed courts have a federal bias. You will find very strong provincial decisions. That is the first thing I would say.

The second thing I would say is that my concern with the new process is that you might have a government in Quebec in the future which has a very different vision of Canada than we have now. That government could nominate a list of one which could deal the Canada that we know a very significant blow.

As to immigration, I think my concerns are simply that the federal power should be made more explicit.

Mr. Breaugh: OK. Maybe I could give you one last shot. One of the things you did not mention in your presentation this afternoon--and it surprised me somewhat, frankly--is how we got here and where we go from here, the process question. I must say, as one who is appalled at how we got here, I am more than appalled at what might happen in the next few years. To be as

polite as we can, this is about the most undemocratic thing that could ever have happened. It is unacceptable that 11 people who are not specifically elected to do this--they are certainly elected, and so am I, but none of these people was elected to draft a new Canadian Constitution behind closed doors, and nobody talked about that prior to any election period.

I have some grave difficulties with how we got here but, not to cry over spilled milk, what I am worried about now is where we go from here. It surely is untenable that deals like this would be put together in secret, then made public, and then no one is allowed to change them. That is not democracy as I know it; that is democracy as it is practised in several other countries in the world, but not here.

I am concerned about what might happen in the foreseeable future. Lining up the first ministers' conferences does not bother me. That they would all meet and have fine wine, good food and discuss wonderful things about economics and about the Constitution does not bother me at all. But the concept that every year now we will change the Constitution in this country, that bothers me a whole bit because basically constitutions work well when they are clearly stated and you let them kind of simmer for a while. Those learned people on the bench make very learned decisions and nobody hassles them; they have all the time in the world, great minds, fine research and all of that. That is how a Constitution works. But it does not work when somebody pulls the rule book out every year and says, "We are changing rule 16." That concerns me somewhat.

I am concerned that the acceptance of the Meech Lake accord changes the rules substantively for a lot of people. It may be that women and other majority groups in our society may never have the same constitutional rights again in this nation if their interpretation of the Meech Lake accord is correct. It certainly is true that the territories are occupying a different time warp here if this one goes through than they did previously.

So the rules are changing substantively with this accord, and the future of the nation will change substantively unless we get a better process in place. I would be interested in your response to the process itself and any comments you might have about what we might do to save our souls.

These guys are all speechwriters for Mulroney.

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Mr. Finkelstein: Sorry. Did you ask whether I was a speechwriter for Mulroney?

Mr. Breaugh: No; that would be unparliamentary.

Interjection: I think he is writing for Jimmy Swaggart.

Mr. Breaugh: Yes. Jimmy is my guy. He needs my help.

Mr. Finkelstein: As to the process, you have outlined the problems in the process, and I think to outline them is to recognize there are problems. I would simply agree with you that the process was not a good one, but it brought us here, and we are now dealing with a particular accord.

In our view, the accord that was generated by that process was a very bad accord, at least for the reasons we have put before this committee and

possibly for others. As I said, there may well be additional problems with the Meech Lake accord, but certainly there are the three.

Where do we go from here? Before you get to the annual conferences, I think you have to deal with Meech Lake, and Meech Lake has significant problems. You have outlined the difficulty of amending Meech Lake. In our submission, Meech Lake must be amended. If it is not to be amended, we are better off not having a deal at all. I think we want to put that clearly on the table.

As to where we go from there, as I say, the position of the Canadian Jewish Congress is limited to these three areas at the moment. There may be problems with where we go from there, but I think the biggest problem is where we are now.

I believe Ms. Bayefsky has something to say.

Ms. Bayefsky: I would add that the Canadian Jewish Congress participated before the Hays-Joyal committee and appreciated the opportunity to do that before the constitutional amendments of 1982 were put into force. Section 33, of course, was added without public consultation of the same sort and, as a result, we are here today after the fact saying, "By the way, it would be nice if, in the future, section 33 were taken out." Obviously, that scenario is unsatisfactory.

Also, we can only assume that our comments and suggestions as to the appropriate amendments to Meech Lake will be taken seriously here and by the government and that this is not a case of simply wanting to put Meech Lake forward and talk about amendments after the fact. That is obviously, again, unsatisfactory.

Mr. Maldoff: If I might just make a comment or two on this, you remarked at the beginning that we are here in force today. We cannot overstate the importance we attach to what is going on with Meech Lake. As Mr. Finkelstein stated at the outset, there are very fundamental issues at play when we deal with constitution-making and constitution-amending, and one of those basic issues is the balance between majority rule and respect for minorities.

One of our driving preoccupations as we look at Meech Lake is that we see that balance being tilted back to majorities, back to powers and away from rights. I do not think it is any coincidence. You have mentioned that women have complained and the territories have complained, but you have also heard the francophones of Ontario complaining, and you will hear the anglophones of Quebec complaining, and you have heard women complaining and the handicapped complaining. Virtually every group that perceives itself to be in a disadvantaged situation, generally speaking--not just under Meech Lake but generally speaking--is coming before committee after committee across this country saying, "This deal hurts us."

As we look at this, we say, first of all, we can look to the future. Sure, what do we do post-Meech Lake? But the problems you are presenting for the future do not have to be there if there is not a Meech Lake. Those annual meetings do not take place if there is no Meech Lake. I think it is very important that before we all take this as a fait accompli, we take a long, hard look at what we are really saying about the future of this country and the respect we have for our minorities, for multiculturalism and for so many values we have.

The second point I would like to make is that underlying our brief is a general principle that we do not think constitutions should be tampered with lightly. We agree fully that these matters are of the utmost seriousness and need a great deal of deliberation, time, thought and openness of process so that there is adequate input and we know where we are going with it.

Underlying our point here, for example, as the Meech Lake accord affects the charter, we are saying that on matters of that importance, the burden is on government, the burden is on the legislator, to prove that rights are not being affected. It is not up to the citizen to come to prove to legislators that our rights are definitely affected. We are in the disadvantaged situation, and the burden is on government to carry that ball and make adequate proof of the point.

The last point, and it is somewhat of a concern to us, is with respect to the Supreme Court. We do not see that as something that potentially can be a problem. The Supreme Court is part of the balance between majorities and minorities. We have a charter. We could just say, "Let us have a charter and let the legislators, who are elected by majorities, interpret the charter." Instead we have said, "No, we are withdrawing that from the legislator and we are going to have a different body." It is not perfect. Judges do not get there by the most perfect mechanisms, but at least it is somebody else passing on this and we have a balance that is established.

Now we come back with Meech Lake. Not only do we tamper with the charter by adding an interpretative section, we tamper with the courts themselves; we tamper with how those judges are going to get there. Not only that but, to the extent that any province complained about the unilateral power of the federal government to appoint Supreme Court judges in the past, what we have done now is to grant the unilateral power of the province of Quebec to nominate its judges. And it is a unilateral power. Nobody else can put forward a nominee for three positions on that court.

So on matters that are fundamental to the future of this country, every time we have a constitutional debate, you are going to have three judges that were put there by the provincial government of Quebec. What if the federal government says no? Well, I do not know how many of you partook of the great orgy of satisfaction that we finally rid ourselves of Pierre Elliott Trudeau and the era of confrontation. It would take someone like that to stand up to the province of Quebec, for example, in a nomination fight. Is that where we want to go?

That is why we are concerned about the deadlock issue. We see that as an immediate problem and a real problem. Let us not forget: Two of the three judges on the Supreme Court from Quebec were appointed while the Parti québécois was the government of the province of Quebec. If Meech Lake had been in place, where would they have come from? So it is an immediate problem and it is a real problem, and it affects how that Constitution is going to be interpreted and how people sitting on that court see their roles in that court.

It is not only a Quebec problem. As we look at free trade, everybody has always said: "Well, the interests of Ontario are consistent with the interests of Canada. Ontario is Canada." We hear that coming out of western Canada, Quebec and some of the other parts. Suddenly we see the interests of Ontario on free trade are not necessarily consistent with what the federal government wants, and there is a debate going on. How would the federal government be able to enforce free trade in Canada? The argument comes back: Maybe new life has to be breathed into subsection 91(2), the trade and commerce power. How

would that life get breathed there? Through the courts. Would Ontario be very interested in appointing a pro-expanded trade and commerce power judge to the Supreme Court if it were in a conflict over free trade?

1630

So it is not just a Quebec question and it is not just an Ontario question. Surely if Mr. Vander Zalm were asked to put forward a name in the current context, he would ask a question or two of a judge's view of abortion these days. The question then comes down to, and this is immediate: What do we want for the country?

Mr. Chairman: I want to follow up on something not directly on the question of the judges. I would have to say that, perhaps at another time, I do not agree with everything you are saying and I do not necessarily agree that a province is going to be any less or any worse. I appreciate the particular Quebec examples, but I still, over a period of time, would question whether it would necessarily be that way. But I accept the argument you are putting forward.

I would like to go back, if I might, to a problem that I think we have as a committee, and I guess I want to go back to the beginning of the accord. One of the things I found really interesting as we have talked about the accord is that we are told that at the time of the Quebec referendum, if you like, a pledge was made whereby if Quebec voted no in the referendum, there would be changes brought about with respect to the Constitution and Quebec would be made a full partner in confederation. The arrangement of 1982, for a variety of reasons, did not do that, and while legally Quebec was in, there was something missing because they had not signed the agreement. So we have then the election of a new government in Quebec. A variety of principles come forward on which the 11 governments began to have some discussions, and ultimately we are told this then led to the Meech Lake accord.

Let us suppose for a moment that the first ministers had not signed it but had said: "Look, we think this is good, we think this is important. We are going to take it back to our various legislatures and have these sorts of discussions." It seems to me that one of the issues that at some point those of us here have to grapple with is that, in terms of the various concerns and issues that you and others and that we ourselves have in our own minds about this, we are also measuring that off against another reality, which is that in Quebec there is a sense that what that accord does is to bring them back into the family. Now, whether it does or it does not, we are talking in many instances here of how people perceive things.

So it is not as though we are looking at this accord and sort of saying, "Look, it is very interesting, but we do not like A, B, D, F and G; go away and do something else," because clearly, if we were to reject this accord, there are implications in terms of what that means within Quebec. What would their reaction then be in terms of perceptions of what our rejection meant? We might say, "Look, we accept the 'distinct society,' but we have grave concerns about charter rights and how they are dealt with and we have some concerns about a variety of other things."

So as we struggle with where to go in terms of this, that is not to say that just because we do not know what Quebec might do, we should therefore reject your comments, because then we would be in a never-ending situation, a catch 22. Yet it seems to me that as we discuss these points and issues, that is still one of the things that somewhere down the road we have to deal with

so that if we are saying, "Look, there are things we do not like, or we want to make suggestions," whether as amendments or in other terms, we have got to find a way to keep the process going. We cannot simply, I do not think, slam the door and say: "We do not like it. That is the end of it."

In terms of that, I then see in a number of the proposals that different groups have made to us that there are various areas where I think one can say, "Look, you might be able to handle that in this way, because it does not necessarily go, say, to the root of the accord which, it strikes me, is that 'distinct society' clause."

Mr. Maldoff quite correctly noted that l'Association canadienne-française de l'Ontario, the Franco-Ontarian organization, went directly to that point and, for them, saw the "distinct society" clause as a fundamental wrong, as something that was going to limit them as Canadians. I do not want to prejudge what Alliance Quebec will say, but perhaps tomorrow as we listen to them there may be some of those things.

We are wrestling, then, with the following: If we accept that a lot of the things you are saying here are correct, or if we would like to move in that direction, we also, I think, no matter what we do, have an obligation to ensure that Quebec is not locked out again. If you want to talk about minorities, I suppose within the Canadian constitutional framework Quebec is the original minority, or at least the Franco-Québécois would see himself or herself as the original minority. I am having a very hard time, regardless of what any particular Premier or Prime Minister has said about the accord, because I am concerned about what I do as an individual legislator to this accord and its impact on Quebec and trying to find a way that will respect concerns that you and others have raised but keep us moving forward. I think that original goal of what the 11 first ministers were trying to do--and I think we have to give them that. I do not think we can just say they were a bunch of silly people locked up in a room. They were, after all, elected.

Interjection.

Mr. Chairman: Yes, right. But that is an aspect of all of this: Where do we put Quebec? What is the message that we are sending back to Quebec? How do we move forward? Now, I do not have the answer to that today and I am not saying that you do, either, but I would like to share that dilemma with you, and any sort of thoughts or concerns you have would be very helpful.

Mr. Finkelstein: Mr. Maldoff, as an English Quebecer, will carry the brunt of that answer, but let me just say this: There are very fundamental flaws with the Meech Lake accord. In our view, and for the reasons that we have given orally and for the reasons that we have given in our submission, it will have a very significant impact upon minority rights, a very significant impact upon the Charter of Rights. If that is the price to pay for asking Quebec to sign the Constitution, then it is too high a price to pay.

As to locking Quebec out, nobody is locking Quebec out if this accord does not go through. The reality is that it is difficult to make constitutional agreements, but that is the nature of constitutionalism. But this agreement is too high a price, and if you are balancing something, then you must give due weight to that balance. Give consideration to the fact that it would be very difficult to amend the accord, but it does not begin and end with the difficulty of amendment. If the price is too high, it should not be paid.

Eric is an English Quebecker, and I know that he certainly has thoughts on that.

Mr. Maldoff: I will be very brief and just add that the problem you are grappling with is a real problem. As someone who lives in Quebec--and I am a Quebecker who happens to speak English, who happens to be a Canadian and who happens to believe that I am equal in my province because of that--I am very well aware of the emotions and the sentiments that are running in Quebec. They are to be considered, there is no doubt of that.

But I would think that in terms of your point about how do you as an individual legislator come down to dealing with this, I can only answer by saying that if I were an individual legislator and if I were legislating not with respect to automobile insurance, which we will do tomorrow and we will do again next year and if we do not like it then, we will do it in two years, but something that is of profound impact--and let us remember that part of what we are doing here is affecting the amending formula such that, if by chance we are right, and I think we are, you are going to have a very hard time ever fixing that problem, because if in fact governments obtained more powers out of Meech Lake, and I will leave Mr. Finkelstein speak to this in more detail, I think the amending formula in the future would make it virtually impossible for you to rectify that problem.

1640

That being the case, I would be looking at this in a very broad perspective of what I see for the future, not only as a member of the Legislature of my particular province, but as somebody who cares about the future of this country and where it is going. Your answer to that would be, "But I am concerned about what happens if Quebec gets really annoyed." I suggest that probably one bottom line I would sleep very well with at night is coming down on and putting to Quebec, very simply, leaving all the other details aside, is the price of Quebec's entry into the Constitution the diminution of the rights of any citizen of this country? Is that your price? Because that is the question that has been fudged publicly.

I would feel quite comfortable putting that question. If the answer to that question is yes, then let us have a raging debate in Canada about that and then we will know what we are buying into for the future. Right now we are being invited to buy a lot of--you are speculating; I am speculating; we are all conjecturing. It is, "Let us take a leap of faith," type of argument, "and if we do not, Canada is doomed anyhow."

Our position is that Canada is not going to be in very great shape if this goes through in any event. Let us get the issues on the table and go to Mr. Bourassa or whomever in Quebec and say: "We have one question of principle. It requires a yes or no answer. Is the diminution of rights the price?" If he says no, then it will be the easiest thing in the world to make that clear in this document. Granted, there will be 400 lawyers who will help you with it, but really it is not that difficult to pass.

Mr. Cordiano: That is part of the problem.

Mr. Maldoff: No, it is not as grave a problem as all that in the sense that if 11 men could get together in the room and sign it, 11 men could get together and work it out. As lawyers, we have been involved in enough of these that eventually, if the principles are clear, people will be able to

find a way to articulate, even if all they say is, "Nothing herein affects the rights of any Canadian under the charter." It is a fairly clear statement.

Mr. Chairman: I will turn to Mr. Cordiano. I just want to thank you for sharing those thoughts with me personally. I appreciate that and the way you phrased the question is an interesting and compelling one. Mr. Cordiano has a supplementary. Then I have Mr. Allen and Miss Roberts.

Mr. Cordiano: I just want to say that you have put your finger right on it. That is what we are trying to grapple with here. It is the essence of the entire accord and what we are trying to deal with. Does it derogate from the charter? Is there a diminution of rights of individuals? We have been talking about this for the last three or four weeks in very finite detail. I think that is what we are trying to answer.

But you have your view, Professor Hogg has his and there are a whole host of other legal experts who have come before us. I imagine we are going to have endless numbers of others who will come before us and some who would like to come before us and have not been given the opportunity. We are going to try an accommodate everyone, of course. We are going through this with precisely that in mind. That is the essence of the decision we have to make.

Mr. Finkelstein: Our position is that the charter is clearly affected. Mr. Maldoff will take a little time and go through it in seven very concise points. If, when he is finished, you think there is a question about it, then there is a risk in proceeding.

Mr. Maldoff: This is the question that has seized the joint committee in Ottawa, the Senate in Ottawa--it has been raised over and over.

Mr. Cordiano: Sure.

Mr. Maldoff: In our view, there is very little doubt that rights are affected for the following reasons:

Section 2, the duality/distinctiveness section of Meech Lake, says that the whole Constitution is to be interpreted in the light of that, including the charter, so the charter is now to be interpreted in the light of Meech Lake.

This is the second point: Section 16 makes a clear exemption for multiculturalism and aboriginal rights. By making such a clear exemption, the first question is, why was it necessary? Somebody who was drafting this thought it was a reasonable concern that charter rights were affected, but was only prepared to immunize two of them. By not immunizing the rest, they have left the clear legal inference, and it is a well established legal rule with interpretation, that the other rights under the charter may be affected, always in the context where Meech Lake is saying the whole Constitution and the charter is to be interpreted in the light of it.

Then we go to subsection 2(4) which stipulates that, "Nothing in this section"--the duality/distinctiveness section--"derogates"--note the word "derogates"--from the powers, rights or privileges of Parliament or the government of Canada, or of the legislatures...of the provinces."

Now if we look at section 16, it says that "nothing...affects"; the operative word is "affects." But in subsection 2(4) we have "derogates." Lawyers use different words to indicate different meanings. "Affects" means

nothing can happen up or down, in any direction, sideways; nothing happens. "Derogates" means nothing detracts. Why did they not say "affects," that, "Nothing affects the powers, rights or privileges of government." No, they did not. They said, "Nothing...derogates." Inference? Possibility of an increase.

The first question is, why did they put subsection 2(4) in? Because the legislators and the governments were concerned that subsection 2(4) might affect their rights or powers, so they made it clear that no, that could not possibly be the case. Then they used the word "derogates." If we see the word "derogates," which leaves open the possibility of an increase of power, privilege or prerogative to government, then the question would have to be, where could government have got more power from?

Since no government under subsection 2(4) could suffer a loss of any power, because there can be no derogation of any provincial or federal power, where could the increase come from? I would say that power is finite. There is only so much of it. It is either shared or somebody has all of it. So to the extent that any government could get an increase of power, and it could not have been at the expense of another government, it must come either from the judiciary, the courts that have a certain constitutional power to interpret, or the citizens who have certain rights protected and immunized under the charter.

Then we look at section 16 which tells us, "Yes, rights could be affected," because section 16 only says that multiculturalism and aboriginal rights under the charter are not affected, leaving open the possibility that everybody else's rights and all other rights could have been affected.

Furthermore, we look at subsection 2(2) and subsection 2(3), which now talk about the roles of government being "affirmed." I would also bring to your attention that subsection 2(3) in French is not an affirmation section; it is a conferral of power section. Leaving that textual issue aside, we have subsections 2(2) and 2(3) which now "affirm"--let us accept that word--roles of government.

Where the role of government steps in, the role of the courts may step out. Maybe it is now more the role of government to determine what is appropriate to preserve and protect duality and distinctiveness, as opposed to the role of the courts, so if you are looking for where this increase of power could come from for a government, the courts and legislatures are obvious candidates and section 16, subsection 2(2) and subsection 2(3) are consistent with that.

Then we also see in subsection 95B(3), that when the people who signed Meech Lake, the first ministers, wanted to protect the charter, they were absolutely unequivocal and clear about it.

Finally, we see the joint committee report of the Senate and the House of Commons on Meech Lake, the majority report, which in response to the concerns of English-speaking Quebecers, said that it is unlikely any constitutionally entrenched rights of English-speaking Quebecers will be significantly eroded by the Meech Lake accord. We have the full quote in our brief. "The 'distinct society' clause is unlikely to erode in any significant way the existing entrenched constitutional rights of the English-speaking minority within Quebec."

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Now that is a majority report, supposedly defending this accord, and the best they can say about rights of a minority is "unlikely," which means there is a possibility that there is an erosion, and then they start discussing "significant." There may be an erosion but we will debate whether it was a significant erosion.

On those seven points, I suggest to you that all the evidence and all the weight of legal argument is that rights have been affected. Having discharged that burden, I would say that I would like to hear the counter-argument that shows in a cohesive way how one answers that definitively. Even if there is some answer, and I am sure there will be a number of jurists who would get up--I note that even Professor Hogg will acknowledge that the interpretation, the way section 1 of the charter will be interpreted, has been affected by the Meech Lake accord; even Professor Hogg.

I suggest to you that the burden is now clearly on those who would like to adopt this, the legislators, the governments, those who gave us, the citizens, the rights and privileges of a Charter of Rights, to prove to us unequivocally that no rights have been diminished or adversely affected. It is not up to us to prove the contrary. We have discharged that burden. The charter should not be tampered with unless the legislators can satisfy us that there is a compelling national emergency that would justify it--even there we will have a debate--or that in no way was it affected.

Ms. Bayefsky: Can I perhaps add to that? Just with respect to section 1, I think there is a distinction to be made about the impact vis-à-vis the charter and section 1. That is, as we have mentioned already, that section 2 can affect the interpretation of section 1 in so far as it sets forth a number of purposes for legislation which may be deemed to be of "sufficient importance," in the court's words in the Oakes case, so as to satisfy the burden of the requirements of section 1. Therefore, in that manner, section 2 can affect the limitation of rights as defined under section 1.

But second, perhaps more broadly speaking, there is a more important effect on charter rights via section 1, and that is that in general, as the congress has maintained, Meech Lake represents a shift from courts, and their responsibilities to affect rights, to legislatures. It says the role of legislatures or government is "affirmed" and it suggests that the courts in some respects are going to have to, or should, defer to the views of governments as to what is necessary to promote the distinct identity of Quebec or to preserve the fundamental characteristics of Canada.

There is always a danger with constitutional bills of rights, as is evident under the European Convention on Human Rights where the European Court has simply developed a concept of margin appreciation which defers to the rights of governments to interpret what is necessary to protect rights. That is a danger in Canada, a danger with our Supreme Court vis-à-vis the charter, that they will not take a serious look, a hard look, and apply a difficult burden of proof on governments to show that a given limitation is necessary, that they will defer to a government's view as to what is necessary to promote, as I have said, distinct identity, or the other section 2 purposes. That shift in onus, between governments and courts is one which I think suggests a danger, in general, to the protection of rights under the charter.

Mr. Cordiano: I would like to pursue this but I am on a supplementary. Mr. Chairman, I will defer to you. There are a couple of other questions I would like to ask further to this. I will just wait my turn.

Mr. Chairman: Mr. Allen, Miss Roberts and then, if we are still compos mentis, we will come back.

Mr. Breaugh: Hey, you cannot introduce that kind of creature here.

Mr. Allen: Compared to where we are at at the moment, everything else was preliminary. I mean, we really are at the nub of the question, I think, and it is quite clear that we are not going to have time this afternoon to really get into a full back and forth, on your seven points for example.

In my own mind, I am not fundamentally concerned that the line between legislatures and courts might wander a little. It has been changing a lot in recent years. It will probably be some time before we find the right balance in those things. I do not think legislatures are simply a lost cause in the preservation of rights, nor do I think courts are the total gift of God to mankind to set everything straight. There is fallibility all around and there are problems on each side. That question, and some of the issues you took us through, do not necessarily cut as deeply with me as they perhaps might.

As I have listened to you, I have been trying to conclude where you are coming out with respect to "distinct society" language in itself. We have been through a long period of time trying to arrive at language that describes reasonably well for us, both in terms of our common parlance and in terms of our legal language and our constitutional constructions, just how we express for ourselves what the place of Quebec is in Confederation, and what status the majority of that population has in terms of some rather fundamental rights as a culture to maintain itself as a minority culture within Canada, within the North American continent.

In some ways the "distinct society" language was rather more helpful than some other languages we have had. "Special status" seemed to be transferring too much imbalance of power in one direction for one province over against others, and yet it could be said that "distinct society" catches up some of those overtones and is more than an interpretative phrase and certainly does convey a power to do something that was not there before. I think I would be prepared to acknowledge that.

I am not sure whether that is illegitimate. I would certainly be more nervous about that than I am if it were not for the fact that there is a charter and there are courts. There can be bad law and there can also be bad legal judgements, but over time one attempts to make good law prevail and hopes for good judgements to replace worse in the courts.

If I look at recent history in Quebec, both in terms of legislation and courts, and think that is all a part of the "distinct society" notion, I perhaps get a slightly mixed story but I do find, for example, that the government could not prevail against the Protestant School Board of Greater Montreal when it came to defending its rights as a minority public education institution over against the larger structure of public education in Quebec. The Charter of Human Rights and Freedoms in Quebec is a fairly extensive and explicit document, and while it does not have constitutional status, it certainly is something the courts have to wrestle with when they approach issues affecting fundamental rights.

1700

I have some trouble being hugely concerned myself about the language of "distinct society," and having it built in here and having a legislature that has the power to promote that, given that setting. You started off by counterpoising a number of things which maintain the kinds of balances that are necessary in our society. Among the counterpoises that have existed in our Constitution, unlike the American I guess, is the fact that we have had collective rights defined.

We have had lawyers and constitutionalists talk about a little Bill of Rights that pertains to French and English language, to native peoples. We have undefined collective rights that have accumulated in our history, such as have attached historically to Mennonites and pacifist groups who were given exemptions in certain things that other people were not. Latterly, some people were able to annex them on a conscience basis, but it was not entirely satisfactory in its expression.

But all that taken together, as I reflect in my mind as I hear you talk, I wonder whether you are fundamentally concerned about that collective right that appears to be being addressed in this instance, more explicitly, the "distinct society" language itself. Can you respond to that?

Mr. Finkelstein: Yes. You started off by saying there is a shifting line between legislatures and courts, and there is. The courts interpret section 1 or the charter itself and, in certain circumstances, they say, "This is not a matter in which we will intervene" or "This is a matter in which we will intervene." But the critical feature is that Parliament and the legislatures made a conscious decision that there was a problem. In 1982, they reacted to that problem by coming up with another accord which promulgated the Charter of Rights and Freedoms, the purpose of which was to transfer minority rights to the courts.

Where the line is depends on the case, but there is no question in principle that the decision that courts should be the arbiter of these constitutional rights is the rule. That value judgement has been made. But balanced into that was a recognition of collective rights, and that is what section 1 is all about. Infringements of charter rights are valid if they are reasonable or demonstrably justified. If the courts do not think they are reasonable or demonstrably justified, the legislature can override the decision of the court pursuant to section 33. So there is a lot of thought given in the charter itself to collective rights. What we say is, "Don't water that down still further."

You ask, "What about the 'distinct society' clause?" We, as the Canadian Jewish Congress, have to be very clear that our submission is that minority rights have to be protected. We do not have a problem in principle with a statement that says one of the fundamental characteristics of Canada is that Quebec is a "distinct society" clause, provided, and I say that very quickly and I underline it, it is also very clear that there are a number of other fundamental characteristics of Canada.

The courts, when they interpret the charter, do not only interpret it in the light of government obligations to preserve and promote Quebec distinctiveness and therefore defer the legislative judgements about that, but also recognize that fundamental to Canada, in the words of clause 2(1)(a), fundamental characteristics of Canada are minority rights, are fundamental freedoms, are equality rights, multiculturalism rights, aboriginal rights.

Those are equally fundamental, and unless they are specified to be equally fundamental to the "distinct society" clause, there is a very grave danger that the Charter of Rights will be watered down. That is our concern. It is not with "distinct society" sitting there in a vacuum; it is what it means the way it sits there now.

Mr. Allen: What do you mean by watered down? I agree that one could have stronger statements about the multicultural phenomenon in Canada in the Constitution, for example, but when you say watered down, watered down from what? The section 27 statement, for example, is about as preliminary a statement as you can make about multicultural rights in the context of the Canadian Constitution, is it not?

Mr. Finkelstein: What I mean is that the rights we have now are the rights in the charter. The only limits on those rights are in sections 1 and 33. What this does is to direct the courts, for the reasons that Mr. Malloff outlined, to apply section 1 very deferentially. In that sense, the rights are restricted in their enforcement.

You asked about multiculturalism. Why only multiculturalism? Why not fundamental freedoms, freedom of religion, equality rights? How far is multiculturalism protected? Section 27 is preserved, but what if multiculturalism depends upon freedom of expression and what if it depends upon equality rights? Those are not in section 16. How come?

Mr. Cordiano: That really has not been defined.

Mr. Finkelstein: No, it has not been defined.

Mr. Allen: I think I will be quite ready to concede that, by all appearances, section 16 simply came in as a political afterthought to meet a couple of lobbies that were out there that were causing the most trouble to a few of the premiers. It was, I think, a rather ignoble and disgraceful use of the constitutional exercise to do that, and it would probably all be much better without that.

I am not going to prolong this. It is the kind of discussion we need to have at length and over some time. I would be only happy to continue at another time and another place with you gentlemen or perhaps back here on another occasion.

Mr. Malloff: If I can just--

Mr. Chairman: Please.

Mr. Malloff: In terms of the afterthought, I have an afterthought on your afterthought.

Mr. Allen: I did not have an afterthought. They had an afterthought.

Mr. Malloff: As to their afterthought, I do not think subsection 2(4) was an afterthought. Subsection 2(4) is a similar type of protection and immunization of government from the effects of Meech Lake. They may have had an afterthought because some citizens screamed loud enough and had enough clout and were favourably enough perceived to get themselves into the play, but there is no doubt that the people sitting around that table thought that section 2 had effect and could adversely affect their powers and their prerogatives.

The second point--

Mr. Allen: I must say I am very puzzled as to what could potentially have derogated. I can see your inferential argument about the possibility of addition, but what would have derogated from the powers of the Legislature of British Columbia from any of the foregoing elements of the section?

Mr. Maldoff: What would have derogated probably is if duality is defined as French Quebec with some English and the rest of Canada as English with some French and then you have the role of federal government in all provinces to preserve duality, could that mean that the feds could come into Quebec and start telling them how to take care of the minority in order to preserve duality within Quebec?

Mr. Allen: The feds could?

Mr. Maldoff: Yes. Could the feds come in? The worry was did somebody suddenly get more power and did somebody lose more power. By saying no one lost power then, at minimum, Quebec is able to say, "You do not have any more power than you had before." It may not be entirely clear how much power they had before, but certainly Quebec is going to argue that it did not lose any power. It is that type of a balance to be worked out, and you can work out the pros and cons for all the provinces and the federal government in reverse also.

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Mr. Allen: So a protection, in other words, with regard to subsection 2(2), where Parliament and the provinces are named together with regard to preserving fundamental characteristics, and there could be some excuse for--

Mr. Maldoff: There could be. That is right. Or the other way around probably is that Quebec could be taking measures to preserve its distinctiveness which might interfere and then the federal government might feel that in some way it was constrained.

The other point I would just like to mention is yes, it has been comforting to win or to see that the courts have upheld a number of provisions of the Canadian Charter of Rights and the Constitution in Quebec. You mentioned the PSPGM case. I guess that is the Canada clause case. But let us just remember that all those judgments were made prior to Meech Lake, prior to a direction from the Constitution of Canada that henceforth every provision in the Constitution will be interpreted in the light of a new series of considerations.

Maybe the Canada clause, the minority language education clause in section 23 just may not have as extensive a meaning in the future as it may have had in the past. Right now, there is a big debate: Does section 23 include control and management, the right to control and manage minority language education? The argument has been based on the equality provisions. Based on two official languages, it should. The courts have been going in that direction. There was a Saskatchewan judgement last week that tended in that direction, following a similar Ontario decision a couple of years.

Would that happen in the future or would provinces be able to come forward and say, "Look, we have to interpret this in the light of the fact that you are a minority and minorities do not have control"? I do not know the answer to that question but I sure would like to know the answer to that question before we all sign on the dotted line and cannot amend it.

Ms. Bayefsky: In so far as you have asked how multiculturalism is really protected by just section 16, the Canadian Jewish Congress would agree that multiculturalism is multidimensional in the sense that it is true that section 27 is a fairly weak statement of the protection of multiculturalism. But that would just indicate, it seems to me, that section 2 should be strengthened even further to reflect protection for fundamental freedoms, the right that made multiculturalism thrive. Without that, it is true, section 16 is not going to do much of a job of protecting multiculturalism.

Mr. Allen: One of the great problems I guess we have is that we did an incomplete job in 1982 and, ever since, we have been sort of stepping our way through single exercises. Every time you move in a Constitution you beg a question about every other part of the Constitution. So the whole process is a series of incomplete exercises, all of which raises the full question of whether we should either sit down and do it all once and for all and leave it for 50 years or forget about the whole thing.

Mr. Chairman: Mindful of the time, Miss Roberts has a particular--

Miss Roberts: I will be very brief because everyone has said just about anything that needs to be said today with respect--

Mr. Chairman: Just before you ask your question, could I ask at the conclusion if the members of the committee would stay for 32 seconds to deal with three very fast administrative matters. Thank you.

Miss Roberts: Thank you very much for your presentation. It has been very helpful and it has given us a more detailed way of proceeding with looking at the charter and at the accord from a legal point of view. It has been very helpful to me because it puts together at least some ideas of how to trace through the various sections of the accord and how it may affect the charter.

I have listened very carefully to what has been said and my concern is with respect to the process, comment being that if the process is so flawed that we cannot accept the accord itself, that is the important thing we have to decide. Is it so flawed that when they did not allow open meetings when there was not the necessary steps taken to come to the accord? Is it so flawed that we should just throw the accord out?

What you have said today I believe is that the Meech Lake accord is fundamentally flawed and what you are suggesting is a change in the accord such that it would not be the Meech Lake accord. You cannot amend it the way you are stating. You are fundamentally changing the basis of the accord. The basis of the accord would appear to accept the duality, the distinct society, between Quebec and the rest of Canada.

You are suggesting that what you put in, multiculturalism, freedom of such, such and such, is going to basically change the accord so that it no longer deals with that one particular point but indeed will develop a new approach to the development of our country on a multicultural basis and may be a better statement of what our country should be. I am not saying it is right or wrong, but what you are saying to me today is that you cannot amend the accord; it has to be changed.

Mr. Finkelstein: In a way, in a very real way, that depends upon whom you listen to.

Miss Roberts: I am listening to you today.

Mr. Finkelstein: OK. What we have been told and what the joint committee said is that Meech Lake is really not going to change minority rights very much anyway. That is what Professor Hogg said, as I understand it. That is what others have said to you, as I understand it.

If that is true, then it is really not a very fundamental change to make that explicit. It is only if that is not true that what we have proposed today is very fundamental. If what we propose today is a fundamental change, that minorities be protected, then it is something that we submit to you should be given very serious consideration. On the other hand, if what the proponents of this accord say is true, then it is not a fundamental change and there really should not be a problem in amending.

Miss Roberts: One way of dealing with this to determine whether it is a fundamental change would be if we knew what had gone on in the closed meetings, what the intention was, what the discussions were. That would have been helpful in our deliberations, would it not?

Mr. Finkelstein: It would certainly have been helpful. I agree with you 100 per cent. I would also say that what we have now is this. Even if we had been privy to what was going on in the deliberations, how much weight a court would give to that as opposed to what actually appears on the paper is another question.

Miss Roberts: One thing is with respect to the judges. I hate to agree with some of your points--

Mr. Finkelstein: Force yourself.

Miss Roberts:--immediately, without spending hours and hours thinking about them. Your concern is that you still want a national basis for the appointment of judges, even though the provinces are the ones that make the recommendation. It should be on a national basis.

Mr. Finkelstein: That is correct. It is a national institution and as with the six non-Quebec seats where all the provinces can nominate judges, or at least the other nine can, we say that should be the case for all nine seats. What is good for the six should be good for the nine.

Mr. Chairman: Lady and gentlemen, thank you very much. You have been very good. We have gone on at great length about some very fundamental issues. I know I speak for everyone on the committee in saying that this has been tremendously useful for us. I think the perspective, the feeling with which you hold those views comes through very clearly and the arguments are very clear.

I suppose each day we are hoping this is going to get simpler. I do not know if it is getting any simpler but I think there is no question that you have in a sense posed questions to us which are going to help in sharpening our focus on the accord. We are very grateful and thank you again for being with us this afternoon.

Mr. Zaionz: Mr. Chairman, on behalf of our committee, on behalf of the Canadian Jewish Congress, I would like to thank you and the members of the committee for receiving us. If you would like us to act as your research committee, I am sure we can undertake it--

Mr. Chairman: If the price is right.

Mr. Zaionz: --and continue the discussion at another time. Thank you very much.

Mr. Chairman: Thank you. We will reconvene in the morning.

The committee adjourned at 5:20 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

WEDNESDAY, FEBRUARY 24, 1988

Morning Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

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VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

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Breaugh, Michael J. (Oshawa NDP)

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Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

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Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From Alliance Québec:

Orr, Royal, President

Williams, Russell, Executive Director

Individual Presentation:

Pepall, John T.

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Wednesday, February 24, 1988

The committee met at 10:06 in room 151.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good morning, ladies and gentlemen. We are ready for the next session. I would like to ask the representatives of Alliance Québec to please come forward: Royal Orr, president, and Russell Williams, executive director. Please take a chair. We welcome you to the committee's hearings. We appreciate your taking the time to come and present your views.

Our 11 o'clock witness had to withdraw today and so we have a little more time than we perhaps thought, which might turn out, in any event, to be quite useful. You have a presentation to make and you have passed out a document to us. Please go ahead in making your opening remarks and we will follow up with questions.

ALLIANCE QUEBEC

Mr. Orr: Mr. Chairman, I would like to thank you and the members of the committee for giving us the opportunity to speak before the select committee on constitutional reform. We are pleased to appear before a committee of the Ontario government to discuss what we see as serious and unacceptable shortcomings of the Meech Lake accord. We would like to commend the government of Ontario for holding open hearings on the 1987 constitutional accord, hearings based on the final text of the accord and hearings in the full light of public attention after due time for reflection on the text.

It is with regret and anger that we must say that the governments that are directly representative of our community, that is, the governments in Ottawa and in Quebec City, have abandoned their responsibility to the needs and interests of our community. It is not overly dramatic to suggest that this may be the last public occasion we English-speaking Quebecers will have to discuss with Canadian legislators why Meech Lake must be changed.

It is not, I believe, wrong for me to hope that here in Toronto, for the first time since the accord was struck, we will be heard openly and reflectively by politicians without the prearranged and partisan conclusions of the debates in Quebec City and Ottawa.

The fact that you have asked Alliance Québec to your hearings shows clearly that you do not share the view that is rather widely held in Canada today that provincial governments should look only to their own backyards. Your invitation to us shows you understand that the building and amending of the Constitution is more than political deal-making. The Constitution of Canada is not simply a bit of legal paperwork to allow for the smooth running of government in this country. Our Constitution is also the document that defines us as a nation, a document that states what is of most importance to us as Canadians, a document that enshrines a vision of what we are and what we should become.

Today, we would like to discuss with you the vision that lies at the heart of the Meech Lake accord. We will suggest why that vision is inadequate and potentially destructive of the interests of our community and of official language minorities in other provinces, and ultimately destructive of a nobler vision of Canada that inspired us before Meech Lake.

Alliance Québec represents the English-speaking community of our province. English-speaking Quebec has a long and proud history as an integral and contributing part of Quebec. Since the beginning of the constitutional history of Canada, our community has been recognized as a legitimate and important element of this country with full rights to participate in the life of Quebec and Canada in our own language. Where the state met the individual, in the Legislature and in the courts, our rights to be heard and served in English were made explicit, as were the rights of French-speaking Quebecers. Section 133 of the British North America Act enshrined the principle of equal footing for what would become Canada's two official languages.

Over the years, our community grew and flourished in the soil of constitutional and political recognition and acceptance. We built schools and hospitals, developed voluntary agencies and public institutions. In recent years our community and its institutions have fared less well, but we still number 800,000 people, more Canadians than at least six of Canada's provinces.

Our community's vision of Canada is clear. It is a vision which we as Alliance Québec have supported across the country. We believe in a bilingual Canada, a Canada where the English and French languages are equal throughout the country and where all governments work to promote the right of Canadians to live and participate in their official language of choice.

We believe that all Canadians should expect a full complement of basic services in their official language, education, health and social services and government services as well as access to justice in either French or English. We commend the government of Ontario for taking bold steps to provide these sorts of rights and services for its French-speaking minority. The vision of a bilingual Canada seems to lie at the heart of these actions by the government of your province, but we do not believe this vision lies at the heart of the Meech Lake accord.

There are, it seems to us, three views or visions of language in Canada. The simplest and most politically and morally bankrupt of these is that Canada is or should be an English-speaking country. The people who hold this view are in a distinct minority, but they are strong enough at times to stall legislation and intimidate weak politicians. Their narrow, bigoted vision is even intruding into Quebec lately.

The second vision or view is of a bilingual Canada, a vision based on the equality of the two official languages and the provision of a basic complement of individual and minority rights across Canada. This is the vision of which we have spoken and which we hold. This is the vision we believe is found in the 1982 Constitution of Canada, but it is also a vision that proves difficult for governments to realize. In place of this, the best vision of Canada, there has arisen a third view.

This view is one that sees Canada as a nation of duality. Canadians have until recently used linguistic duality and bilingualism interchangeably, but there is in the rhetoric surrounding Meech Lake an emerging definition of duality that is very different from bilingualism. This notion of duality is based not on an inspired vision of the equality of two languages, but rather

on the simple, social fact of the existence of two major language groups in Canada. In a pale imitation of bilingualism, this view sometimes works itself up to recognizing the presence of official language minorities within the major language groups, but it does not hold up a difficult yet necessary goal like language equality for governments. It contents itself with a simple description of, and therefore an acceptance of the status quo. This is the vision of the country that lies at the heart of Meech Lake.

The view that duality and not bilingualism is what characterizes this country also allows governments to shirk responsibility for making language equality a reality. In our own province, it seems to be part of the thinking of a government that allows its language agency to revoke the bilingual status of municipalities and public institutions when the English-speaking population or clientele falls below 50 per cent. Bilingual status in Quebec does not bring with it, as in Ontario, a requirement to provide minority language services. It is rather a dispensation from the prohibition of functioning in the English language. Nevertheless, bilingual status is of critical importance to a number of English-speaking institutions in our province.

The static vision of duality lies behind the Quebec government's rigid reduction of access to English-language schools in Quebec, the ongoing prohibition of the use of one of Canada's official languages on commercial signs, the threat to override fundamental rights if the Supreme Court decides that the sign law violates the Canadian charter, the clamping down on distributors of English-language movies in an attempt to give wider access to dubbed American culture in French. All these actions, we believe, are not inconsistent with the duality view.

Let there be no mistake: There really is a fundamental debate about the nature of our country here in the discussion of the Meech Lake accord. Let there also be no mistake: We have not come to Ontario to seek your direct help on the effects of this vision of Canada's duality in our province. We are ready to fight those battles ourselves. But we are here to say that we believe the Meech Lake accord, which you are charged with investigating and upon which you must give your opinion, compromises the bilingual vision of Canada and weakens our ability to defend our individual rights and our community's interests in Quebec.

The Meech Lake accord has been sold to us by the first ministers as a deal to bring Quebec into the Canadian Constitution. Alliance Québec has advocated publicly the importance of Quebec becoming a signatory of the Constitution. We have as well supported the idea that Quebec's distinctiveness be recognized within the Constitution, so long as the recognition of that distinctiveness does not compromise the charter rights of Quebecers.

We have always said that if the supremacy of the charter is recognized, then the Quebec government can take such measures to promote the French language as it sees fit. We were appalled, however, to see how the first ministers dealt with Quebec's demand that our distinctiveness be recognized. Section 2 of the Meech Lake accord outlines two fundamental characteristics of Canada, its duality and the distinctiveness of Quebec's society and says that the entire Constitution is to be interpreted in the light of these two fundamental characteristics.

But the accord does not include other equally fundamental characteristics of our country, such as the supremacy of fundamental and equality rights in the political life of Canada, the equality of the two official languages, the multicultural nature of our country and the special

rights of aboriginal peoples. By not including these other fundamental characteristics, the accord creates a hierarchy of values that the courts of Canada must use to interpret the Constitution. We fear that this hierarchy of values will ultimately work against our interests.

There has been much debate about the implications of section 2 of the accord. Quebec says it gained powers by it. The federal government implies that it does not change anything. Obviously somebody is wrong. If, as Senator Lowell Murray and others have suggested, the duality and distinctiveness clauses of section 2 have little or no impact, then why did the first ministers go to the trouble of protecting the powers, rights and privileges of their governments in subsection 2(4)? Why did they add section 16 which states that section 2 will have no effect on multicultural and aboriginal rights as recognized in the 1982 Constitution?

Explicit protection for the rights, powers and privileges of governments, limited protection for multiculturalism and native rights, and no protection for fundamental rights or language equality rights: That is what we see here. As was suggested to you by l'Association canadienne-française de l'Ontario, this looks like a deal for the benefit of governments and not for individuals. This looks like a deal between linguistic majorities. The question has been asked, who spoke for Canada at Meech Lake? We have been asking for eight months, who spoke for the linguistic minorities?

The problems we see arising from the present formulation of sections 2 and 16 have a relatively straightforward solution. Either the supremacy of the charter is guaranteed by strengthening section 16 into a full nonderogation clause of charter rights, or the other fundamental characteristics of this country must be added to section 2 to ensure that the duality and the distinctiveness of Quebec do not stand in isolation as the pre-eminent political values the courts must consider in interpreting the Constitution. Fix section 2 or fix section 16. Without that, this accord does not promote and enshrine the fundamental values that must be at the heart of our Constitution and our country. Without that, this accord should not be approved.

We have already been told in Ottawa and in Quebec that to open the accord would be to destroy it. We have said and we say again, if section 2 and section 16 of the accord do not work to compromise fundamental and minority rights in Canada, if this was not the intention of the first ministers, then make that clear in the accord. Most minority groups in the country have expressed concern about this issue.

If, on the other hand, the duality and distinctiveness clauses do have a potentially negative impact, then we respectfully suggest that you must put the question to yourselves and eventually to the first ministers whether the price of the Meech Lake deal was the supremacy of the charter and the rights of minorities.

These are our main concerns about Meech Lake. There are a number of other concerns noted in our brief, which you have before you. In our view, the accord is seriously flawed in a number of ways. Some of those flaws we can accept. We understand that the quest for perfection cannot be the enemy of progress, but in our estimation, Meech Lake fails to promote a vision of Canada's future based on fundamental principles of individual and linguistic equality. Therefore, the Meech Lake accord is fatally flawed. The basic values of our political life as Canadians are not advanced in this constitutional deal and we say it must be changed or stopped.

1020

Mr. Chairman, you and your committee must write a report on your findings. Are you prepared to write a report which says that the rights of Canadians are unequivocally unaffected by this accord? If you cannot come to that conclusion, are you prepared to say that compromising the rights of Canadians is an acceptable price to pay for securing the accord?

All legislatures in this country are being asked to pass judgement on this accord and all legislatures and legislators will bear direct responsibility for the actions that flow from this accord in Quebec. The best your colleagues in Ottawa could do in their analysis was the following, and I quote from the report of the joint Senate-House of Commons committee published in September 1987, "In law, the 'distinct society' clause is unlikely to erode in any significant way the existing entrenched constitutional rights of the English-speaking minority within Quebec."

That must rank as one of the most disquieting reassurances in the history of Canada. Somewhere, some time in this country there must be an honest debate on what Meech Lake means. Alliance Québec hopes that will happen here in Ontario. As Canada's only English-speaking minority, we face unique challenges in Quebec. We have committed ourselves to meeting those challenges as Quebecers. We have never turned to other provincial governments to sort out our problems. Therefore, Alliance Québec has not come to ask that Ontario intervene in the affairs of Quebec. We do, however, ask you to take seriously your responsibility to give national leadership on constitutional and language issues. We therefore call upon you to insist that the following three steps be taken:

1. That the governments of Canada acknowledge their responsibility to promote both official languages.
2. That section 16 be redrafted to ensure the supremacy of the charter, and not just the equality provisions but the whole charter.
3. That you encourage your government to send a clear message to the minorities of this country by stating unequivocally that the government of Ontario will advocate in future constitutional negotiations the removal of the section 33 override clause from the Charter of Rights.

Alliance Québec's message to you is clear. Help us as Canadians to secure our basic rights and we as English-speaking Quebecers will make things work for our community in Quebec.

Mr. Chairman: Thank you for your presentation as well as the brief you have presented to us and also for the specific recommendations in terms of specific things we can look at. I think that is very helpful to the committee in terms of looking at where it might be able to go. I will turn then to questions.

Mr. Breaugh: The process is a difficult one to understand. With these hearings, we are trying to provide what probably, sensibly should have been done some time ago; that is, a mechanism whereby the public can present its points of view and we can sort out differences of opinion and agree with some and disagree with others.

I think what you do is a very good job of analysing what has happened so far, what is wrong and generally what the concerns are. In what we have heard

to date, I think the paramount concern is, what is the relationship between this accord and previous attempts to put in place a Charter of Rights for Canadians? We are coming to the conclusion, I think inevitably, that it does not matter how many times people say there is no impact and you have not lost any rights, that quite sensibly most people are saying, "It is at least open to question and there is some doubt there." Some are really saying, "We certainly have."

We have a political problem to boot. Everybody knows that no one wants to see amendments on this, or if they see them, they are happy to receive them, as the joint committee did, in the traditional parliamentary sense that opposition parties put forward their positions by way of moving amendments and they do not carry, so the government in a majority situation does not have to worry about such things.

I have been exploring what has been suggested by a few who have appeared in front of us, that ultimately this will be decided in a court. Why not put together a reference to the Supreme Court that does decide whether there is an impact on the Charter of Rights by the Meech Lake accord? I would be interested in hearing your opinion on whether that is a useful exercise for us to go through.

Just before you answer it, I think we have to put to you that our political problem is for real. It is no problem for us to move amendments here. The problem is to get them out of here into the Legislative Assembly. The problem up there is, how do you get them to carry? Then the problem is, how do you get them to carry in every other assembly across the country?

Even with minimal experience in parliamentary procedures, one could see that it could take well into the next century to get a simple amendment put through 12 chambers across the country; and when you have done that, it will still go to court. The suggestion is that perhaps we can provide the ultimate answer by doing a reference to the Supreme Court which answers that very basic question. I would be interested in your response to that.

Mr. Orr: First of all, I would agree with you about the strangeness of the process we have been going through. As you would see in our brief, we condemn the process. One of the most frustrating parts of this whole debate has been that we have not really functioned the way parliamentary systems should function; we have basically functioned without any kind of opposition, certainly at the federal level. You are quite right that there was some attempt to suggest changes, but leaders of all parties had already given their support to the accord as it existed, and so one has to wonder how serious they were about any recommendations for change.

I should say as well about this discussion here today that your comments are the first time in one of these debates--and we have been through three of them at this point: in Quebec before the final text of the accord, and I will come back to that in a moment, in Ottawa before the joint House and Senate committee and before the Senate committee--that I have heard someone talking seriously about looking for politically saleable or workable solutions.

What has happened up until this point is I do not think any group of Canadian legislators or politicians have really given themselves the task of thinking, "How would we actually go about a change if we believe there should be a change to this accord?" That in itself, I think, is very promising. I should also say too that while I agree with you that the procedure might become difficult and may be protracted, I do not think that people should be scared off from the attempt to move changes through legislatures.

The government of Quebec chose to hold its public hearings before the final text, based in effect on a press release from the first Meech Lake conference. There was some serious debate about what Quebec's bargaining position would be going into the final round of negotiations, or what turned out to be the final round of negotiations. That was a serious debate, particularly around the "distinct society" clause and whether or not that should be defined. The government of Quebec used that to go into the final negotiation and came out with the final text that they thought conformed not only to their position but to what they had heard in the public testimony.

It is a little bit more complicated now because there is a final accord that everyone had agreed on, but I do not think that legislatures and committees of legislatures should hesitate to try that regular parliamentary process and suggest that other legislatures or first ministers maybe should have another round or kick at the can in terms of negotiating.

If in the end it was decided that the reference case was the way to go, if that was determined as being the most politically saleable or effective way to go with those things, I think we would ultimately have to welcome that, but I think we would only welcome it if whoever launched that reference case gave an undertaking to get a change or not to approve the existing accord if it turned out to compromise charter rights in an appreciable way.

We have had a lot of experience with governments moving into reference cases simply as a delaying tactic. If it is more than a delaying tactic, then it strikes me as an interesting possibility. But if it is simply a delaying tactic and the government will not undertake to be in some way bound by the decision, then I do not see its usefulness.

Mr. Breagh: We used that technique in Ontario recently to establish funding for Catholic schools. Central to that issue was not only whether that was appropriate for a Legislature to do but whether it would stand up before the Supreme Court. It was our conclusion that it would be pretty silly to proceed with something that was obviously going to be challenged without checking it our first by means of a reference. I think it was a reasoned and successful attempt to try to check the validity of your legislative proposal with the Supreme Court as quickly as you could and as squarely as you could. So the technique has been successfully used here before.

1030

I want to move ground a little bit, because the more I look at this, the more concerned I become with the process itself. It is clear that 11 people did meet in a room and write a constitution. Strange as it may seem, they were able to do that. It is clear that most of them will be able to go back to their assemblies and carry the day. Most have majorities. Even where there are minorities, there may be embarrassments and split votes and all kinds of things, but it is quite likely that the premiers will be able to deliver some version of an approval process in their own assemblies.

Despite the fact that they can do all of that, everybody else, of course, can go to court. Some are already on their way to court. The two territories have challenged the validity of this process and their exclusion from the accord; they have begun that already. There is every sign that a whole lot of other people are going to do this as well.

For practical purposes, what started out to be a deal cut in private has to turn public sooner or later; it cannot be avoided--I do not think it can be

avoided--and it will not be avoided, in my view at any rate. People are going to use their rights to go to court. If the legislative and political process does not function, the only recourse they have got left is the Supreme Court, and that is where they are going.

I then become very concerned about what happens to this country over the next four- or five-year period. Supreme Court decisions are taking on a new importance in Canada, and I think quite a distinctive change is taking place there from what we are familiar with. That is one combination. The second is all of these other questions have been challenged before the court. Throw into that the fact that all the first ministers have a stated intent now to meet every year to discuss the economy and the constitution and supposedly, it follows to my mind anyway, more changes to the Canadian Constitution.

It does not take long then to figure out that we are going to go through a whirlwind period where the first ministers will be proposing constitutional change, theoretically the Legislative Assembly of Ontario and others will develop a process of their own for bringing forward change and court challenges will be going on. It gets to be one hell of a mess in a short hurry here.

I am concerned about that, which is why I am wondering, is there some kind of reasoned approach to take with this? It strikes me we could get into an all-out battle, which will not do much for anybody. But if there is a reasoned approach that can be found, we ought to find a way through that and get it.

In my reading of the accord, I do not see much that I find fearful in terms of my own personal charter rights, but a number of groups are making a good argument that this does not really count; what counts is, is there doubt there? There is certainly doubt in the minds of many people, who believe they have lost some rights by means of this accord. If the doubt exists, then we have to address that.

I would be interested in your comments about process, about the dangers that we might go through in what I would hope would not be a long period. But certainly as it is set out here in the next four or five years, the Supreme Court is going to be real busy, the premiers of the country are going to be real busy and the law profession should be at an all-time high throughout Canada.

Mr. Orr: I think if you were an English-speaking Quebecker, your doubt about how your rights were affected would be a little bit higher than it is as an Ontarian.

But, that aside, I think the concern that Canadians in other provinces should have is less with what the immediate impact on their Charter of Rights in other provinces might be but simply the process that was gone through and, through that process, the potential compromising of the rights of a group of Canadians in an appreciable way. We think our rights were probably more compromised by this deal than those of people in other provinces, but again I do not think that should matter.

From the perspective of most Canadians, if the 11 men can get together in a room and make a deal and this is the result, then they can get together in a room and make another deal if this is the way we go about building our Constitution here in Canada.

On your observations about what we are heading into in terms of a difficult time, I think potentially we are. But the fact of the matter is that Canada is changing. I do not think that necessarily everybody has recognized the kinds of changes that are going through.

If I could, I would like to speak about language and the charter for a moment. First of all, in terms of language in this accord, there was no attempt by the first ministers to say that it is a responsibility of governments to promote both official languages or both language groups in this country. Through the whole Meech Lake process, the government of Quebec suggested that one of its goals was to secure better protection for French-speaking minorities in other provinces. The fact of the matter is that it did not secure that, and I think a number of the minority groups are suggesting that, if anything, it may have compromised their rights as linguistic minorities in other provinces.

I think with this whole Meech Lake process, with everything that is happening in the country and with the things that are happening in the provinces, we have to see that more and more Ontario and New Brunswick are being called upon to provide national leadership on language questions. Quebec is not necessarily providing the leadership it once did. Both Ontario and New Brunswick are taking major steps in terms of improving services and improving the acceptance of their minority-language communities.

I think inevitably in these kinds of debates, when language questions are touched, the governments of Ontario and New Brunswick in particular have a special responsibility to speak out and to convince other Canadians, including Quebecers, that they are taking positive, important steps to improve the use of both official languages in this country.

Until that is accepted, until it is accepted that the government of Ontario has that national leadership role, until it is accepted that it is OK and expected in Canada now in these kinds of national debates that Ontario, at least, is going to speak out about language questions, we may be running into problems, but the problems arise more because of misperceptions of the new reality or failure to appreciate the new reality.

In terms of the charter rights, there again I think we are only now coming to terms with what it means to have a charter. Some of the very recent decisions, especially the abortion decision, I think are only just beginning to demonstrate to Canadians what it means to have a charter. It means you have created another important and essential pathway for democratic participation in a sense. That was the intent of the 1982 accord. That was the intent of having a charter. This is not an unreasonable thing. This is not an undesirable thing. In fact, in an increasingly multicultural and pluralistic Canada, it is a necessary pathway for democratic participation.

That is going to be difficult. There are obviously vested interests in terms of provincial governments that do not like to see that extra pathway of democratic participation. There are people basically who are part of majorities within those provinces or within the country who do not like to see that extra pathway of democratic participation. But the country has to come to terms with the existence of the charter and the implications of the charter. That is never an easy process.

I agree with you that we may be heading into a time when there are court cases all over and there are ongoing discussions and there may even be tensions created by it, but these are the new realities. The new reality is

that other provincial governments are taking leadership on minority-language questions; there is a charter and people are starting to understand how to use the charter, and the rest of the system is having to adjust itself to that. Inevitably there will be stress, inevitably there will be tension, but that is what Canada is now, and we have to come to terms with that.

Mr. Williams: If I could just return to the question on the reference case, if the difference of opinion is whether your rights have been affected and the doubt is whether the charter is supreme but there is a unanimous principle that the charter should be supreme, then I think it would be incumbent upon all of us to correct that doubt prior to having the accord passed, instead of using a reference case model, if there is unanimity on the principle that the Charter of Rights and Freedoms is the supreme charter.

Mr. Breaugh: I would agree. The problem is that, as a legislator, the one fact of life I have to understand is that when I am through with the bill, somebody can always go to court; that is where the fine print is decided and the final interpretation is put on any law. I cannot escape that. What I can do is expedite it.

Mr. Williams: I think under most conditions that is right, but we are talking about whether there is doubt about that legality with the charter, and if there is doubt let us clear it up before you have to go there.

Mr. Breaugh: Normally I would certainly agree with you. Let me just conclude by trying to give you what I sense is a reasoned direction to move and get your response to it.

I think there is a need to resolve, as clearly as we can, this matter about whether your charter rights have been affected by this accord. Whether that is by means of an amendment or by means of a reference, I really think that is essential and that it will happen one way or the other; it is a question of whether it happens in a controlled circumstance or by happenstance. I think that is a major piece.

The second thing, though, is that I am really coming to the point of view that if we do not rectify this process--I would think if the first ministers gathered this year and attempted a repeat performance of last year, there would be howling of such substance, rightfully, from across the country as to make them incredibly silly if they tried to do that again.

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But I do think part of our job is to put in place a process which in its simplest terms just reverses this thing. It should start with public hearings. It should go through the legislative assemblies across the country. It should end at Ottawa with some kind of a first ministers' conference where they put the fine print together or where they test the waters to see whether a final agreement is brought about and that there is some urgency to that.

If we allow this to go for a three-, four- or five-year period where there are court cases outstanding and things are suspended for a little while, I think we will create a whole lot of problems in a multitude of programs across the country as to whether or not they are legal. Governments will then hesitate to embark upon new programs in any area because they are not sure whether this is going to hold up in court.

I would like to get some sense from you, if I could, about the urgency of that. This is new to us. I think part of it is our angst that in Canada we

have not had a Constitution for very long, and unlike other jurisdictions, we are not quite sure what a Constitution means. We certainly are not accustomed to the idea that the Supreme Court of Canada on a Monday morning announces a decision and all across the country ministers have to rearrange programs and walk into press conferences and do not know what to say--which is a really unusual thing--because they are unsure of the ramifications of these decisions. The only thing they do know is that what was legal yesterday is not legal today, and a government all of a sudden has to respond, and sometimes that response takes place all across the province in every hospital--in the latest decision--in almost every kind of legal situation that you can think of. There will be twists and turns to the decisions of the Supreme Court.

We are entering into an era where the basic rules of how our country operates have been altered somewhat, and I believe there is some urgency in having our political process adjust itself so that people by and large, as quickly as we can, recover faith in their political institutions, there is a process that makes sense to them, they see where they fit in that process, they have an opportunity to participate and make their views known and there is an openness to it.

We have talked with a number of groups about this. I am trying to get some assessment of whether the process really may well have put the Meech Lake accord in great difficulty, whether it is good or bad, just because the process was flawed severely. I would like to get your impression of where we go from here.

Mr. Orr: I agree with you that the process was enormously flawed and that we as Canadians must take several lessons from this and not allow ourselves to go through this again. On the other hand, we have this accord before us. It is through some legislatures; it is not through others.

We are being put in this really unacceptable position--particularly unacceptable for English-speaking Quebec--where we are told to accept this accord or create chaos, whether that chaos be resurgent nationalism in Quebec or some of the things you outline in terms of delays, attempts to clarify and things getting stalled.

My sense is that this is a situation we should not have been put in by the first ministers. I pin the blame on the first ministers not solely for the content but almost as much for the process. How could they have let us get into this situation is, I suppose, the obvious question.

I think you are right; there is a new reality that is developing. We are very ill prepared for that new reality, as I said before. That new reality not only affects how ministers and government must react to decisions but it obviously affects how we go about making changes to this Constitution now that we have a Constitution.

I really wish that the governments had thought a little bit about this instead of approaching these negotiations almost as a contract settlement negotiation. There are appropriate ways to negotiate different things, and this was an inappropriate way to negotiate this.

I have no easy solution to the situation we are heading into now or the problems we are heading into. All we are saying is that the price of this accord going through, or even the price of the lesson we learn as Canadians

about the process we must go through, cannot be to compromise the fundamental freedoms of English-speaking Quebecers.

I think any slowdown is going to result in problems. I think it is going to become a political problem for those politicians who are courageous enough to say: "No, this is not right. This cannot proceed in this way. We have to look at a different way, whether it is a combination of court-reference cases, plus further negotiations plus further discussions." I do not know what that complement of actions would be, but I think we are fast approaching the realization that this kind of large effort has to be undertaken. The implications are just too great, not just the implications of what the content of this accord is, but as you point out, the implications of further discussions and further changes to the Constitution.

I do not think we, as Canadians, can for a second time hold our noses and pass a constitutional deal. We did that last time with the "notwithstanding" clause. If this is allowed to go through, if we do it this time, then I think what we have is a compromising situation, certainly for English-speaking Quebecers and probably for minority language communities right across this country, and the establishment, if it is not established as the regular way these things are dealt with, of a certain precedent that on questions of extreme national interest like bringing Quebec on side in the Constitution, it is OK for 11 guys to get together in a room and come out with a deal which they not only agree on but also have all promised to get through their legislatures.

Mr. Morin: You mentioned a price of Quebec joining in at the expense of the others. What about if Quebec decides not to join? What price would that be in your opinion?

Mr. Orr: We, as Alliance Québec, have always advocated that Quebec needed to be a signatory to the Constitution. We have stood behind that. Actually, we stood behind all five principles that the government of Quebec, Bourassa's government, announced shortly after it came to office. We have supported the notion of recognizing Quebec's distinctiveness in the Constitution. We simply have said that this should not be there in isolation, that other fundamental characteristics should be recognized. We have supported that whole list of things.

The problem is that we have been put in a situation as a community of being asked to choose between a bad deal and Quebec perhaps feeling even more isolated within Canada. I think some of the suggestions of what would happen if the deal fell apart are a little bit extreme. I do not think it would be the occasion or the reason for a terrible resurgence of nationalism. As a matter of fact, I think nationalism will continue to exist in Quebec and will use whatever constitutional or political resources it has to advance its political agenda.

I think it is essential that we, as Canadians, bring Quebec into the Constitution. I think it is essential, though, that we do this in a way that is open, democratic and respectful of the steps forward we have already taken, primarily the establishment of the charter. I do not see that as an easy process. I think what the first ministers did was not resolve a problem but create a whole set of new problems for us. This is not a deal that resolves the fundamental problem of the Constitution of Canada. This is a deal that creates a whole host of new problems and could create even more problems if it is not fixed.

We are saying this deal should not be allowed to disappear, should not be allowed to fail, but it has to be changed; it has to be improved. As I said earlier, it is only when groups such as your own and it is only when governments such as your own take on the responsibility of finding the ways to change, of convincing Quebec that these things are important enough to your government that they must be changed and that these things will not compromise the legitimate gains Quebec has made in this accord, that we will be able to start moving towards that.

I do not think legislators in this country should see their options as accepting this accord as it is or allowing it to fall away. I think your responsibility is much greater than that and is much more difficult.

Mr. Offer: Thank you very much for your presentation. In my question, I would like to pick up on the last point Mr. Morin brought forward. It seems from your presentation that you are saying you applaud the fact Quebec is now part of the constitutional family, but that with respect primarily to section 2, this could result in--I wrote down this phrase--"compromising fundamental freedoms." We have heard from other people that it might be, and I think it is the same thing, a diminution of rights. Is that a fair assessment of the concern you have with respect to section 2?

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Mr. Orr: Especially when section 2 is taken in consideration with section 16. I think the two necessarily work together.

Mr. Offer: On that basis, we have heard from some people who have said that section 2 is an interpretative section, that it conveys no rights, and from others, that it may not be as clear an interpretative section as one might want. We have also heard, I think it is fair to say, that accepting section 2 as an interpretative clause, its use as an interpretative clause may affect rights.

Carrying on from that point, we have in the charter--I am sure you are well aware of section 1 of the charter that talks about the "reasonable limits prescribed." My question most specifically to you is that in Quebec, in dealing with matters for judicial determination, for judicial interpretation, is that not basically how they are proceeding right now? Have not the courts in many ways indicated that Quebec has a distinctiveness, that they take a look at the issue they are deciding, that they take a look at the realities, for instance in this case, of Quebec, and that they then go that next step and say, "Yes, this is the matter at hand, but is this a reasonable limit 'prescribed by law as can be demonstratively justified in a free and democratic society'?"

From that preamble my question to you is, as to your concerns with respect to the compromising of fundamental freedoms, are those safeguards not being used by the courts right now and have they not been used by the courts in order to address your concerns as they exist right now?

Mr. Orr: You say "right now." Let me attempt to answer that by saying that I think you are right. When they are looking at a section 1 argument launched by Quebec, the courts have said, "Let us take a look at Quebec when we are trying to decide whether this is demonstrably justifiable.

But the fact of the matter is that what we are looking at after the passage of this is, if not a whole new ball game, at least maybe another base

on that ball field. What we are looking at is an accord which says explicitly that there are two fundamental characteristics which are interpretative of the entire Constitution. That section 2 is going to go into the Constitution as section 2 of the entire Constitution, so it is not just the onus of this accord. The entire Constitution is to be interpreted in the light of duality--it does not say "duality," but it says it in a longer format--and the distinctiveness of Quebec society.

That clause also goes on to suggest that there are certain impacts or, in this case, no impact on the powers, rights and privileges of governments. It goes on to say of the distinctiveness of Quebec society that the other governments have a responsibility simply to preserve one of those fundamental characteristics, duality, but that the government of Quebec has the role--it is not just that its role is "affirmed"; in French it says it has the role to protect and to promote the other fundamental characteristic; that is, distinctiveness.

Add to that section 16 and *inclusio*, *exclusio* and all those principles, and I think what you are looking at is maybe the courts now are thinking about some of these elements, but after this accord is through they will be required to think about these elements. They will be required to take these things into account. In their reasoning, they will have to deal with the interpretative clauses that are imposed upon them for a question that may touch language in Quebec. Obviously, it is a guessing game exactly what the courts will do with this kind of accord, but what I think we see here is that in a number of ways that combine together, there is a very real question about whether fundamental freedoms in Quebec may be compromised by this deal, whether fundamental rights in Quebec will be different than in other parts of the country.

If we use a specific example, the signs case on which we are currently awaiting a decision of the Supreme Court, you are right. It was a section 1 case that was made. The government of Quebec went and tried to make all the arguments to demonstrate that it was reasonable and acceptable in a free and democratic society. They have not been able to make that case in the lower courts. We await to see if the Supreme Court will have that. Clearly, one of the things they would do in a freedom of expression case is to try to use the "distinct society" clause of the accord in a much more aggressive way than they would be able to do now, because "distinct society" does not have any standing in law until this accord gets through.

They may claim that Quebec is distinct and they will have to make the argument that it is justifiable because it is the only French-language province, etc., but they are not able to go in and say it is a distinct society. What constitutes that distinct society? We can make arguments based on existing legislation about what constitutes that identity they are supposed to promote. Basically, what we see in this accord is a whole series of precisions and more arguments that the government will be able to use to strengthen the kinds of arguments it is already making.

Mr. Williams: Perhaps I could add that following the passage of this accord, the Minister responsible for Canadian Intergovernmental Affairs in Quebec, Mr. Rémillard, said that those articles would facilitate use of section 33, the "notwithstanding" clause, to circumvent the issues of freedom of expression as outlined in the charter. Back in Quebec, he clearly told the province his intentions on how this accord could be used if they so wished. I think the intent is quite clear.

Mr. Offer: I appreciate that final comment. I know there are other

people on the list. I just want to ask one final question. It seems that when people come before this committee and talk, as you have today, about concerns found within the Meech Lake accord, I sense that what they are doing is just looking at the accord itself, and as you brought out today, are not taking a look at the charter's section 1, the limitation provision of the charter. I think it is an important aspect to bring out, to say that we are concerned about how this section of the Meech Lake accord will be used as an interpretative section.

We are concerned because, in its interpretation, it may result in the compromising of some fundamental freedoms, but I think, and I suggest to you, that, first, one must also keep in mind section 1 of the charter, the limitation provision, and second, with respect to the concerns one has with respect to the judicial interpretation, the courts have already, in one way or another, dealt with an acknowledgement of the distinctiveness of Quebec society and have looked at that distinctiveness in terms of a particular question and in terms of section 1.

I am wondering whether that fact does not in some way ease your apprehension, and weighing that against your initial point you brought forward today, that you want Quebec in the constitutional framework, the constitutional family, ought not those two points be weighed, one against the other?

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Mr. Orr: I think most minority groups in Canada are ready to say: "We can accept section 1 of the Constitution. We are prepared to go into court and argue before the courts and have the courts decide whether a particular law is demonstrably justifiable in a free and democratic society." That is the basic rule of the game. That is acceptable. That is what charters are all about. You get to go before somebody and explain it.

In this case, what we are looking at is a kind of stacking of the deck. It is not simply that we are going to go in and discuss these things. We are now going to go in and discuss these things in the light of certain interpretative clauses, certain elements of Quebec society that must be, that are required to be part of the court's decision on these things. It is not simply that those two characteristics are noted. Then other arguments, as you well know, can be made on the basis of what is "promote," what is "protect" and what is "derogation of government powers"?

"Derogate" suggests nothing can be taken away, but it does not say nothing can be added. In section 16, while some things are inclusio, some things are exclusio. The language in section 16 just says "affects," which means it can be neither increased nor decreased. You know as well as I do that all those arguments are then drawn out to give weight to section 2. Everything is pulled together into a package to try to demonstrate in any particular instance that on some particular freedom, probably freedom of expression, compromising that freedom is justifiable.

It is not that we do not accept that we have to go and do the arguments around section 1. It is not that we do not accept that when we go into those discussions from Quebec, one of the things we have to talk about is the distinctive elements about Quebec society. But this seems to us to be really giving the courts a signal that there are certain things they must consider when they are dealing with Quebec that are very different from other parts of the country. I think the implication of that is that rights are going to

differ from one province to another. I think that could be the implication of this. It is not just based on a court decision; it becomes constitutional. If it is in the Constitution plus there are decisions--it is bad enough if there is just a decision, but if it is a reinforcing of a constitutional provision, then that becomes the law of the land.

Beyond that, I think the question has to be posed, because it has never been answered directly by the Quebec government: Was it their intention to compromise fundamental freedoms? I think it has been said here that a number of groups have come before not only your committee, but also other committees, and said: "We are very concerned about what has happened here. We are very concerned that the result of this, intended or unintended, may be to compromise freedoms." It is difficult to say because this is a difficult call to make and game to play, but that is our concern.

I think the question should be put to the first ministers: "Was that your intention? If it was not your intention, it seems to us a reasonably simple change can be made in the accord to make that clear."

Mr. Eves: I am perhaps somewhat more naïve or somewhat more hopeful than Mr. Breaugh with respect to amendments. I do not think a wide package of amendments is going to carry the day, but I think your suggestion with respect to the amendment to section 16 is one that may have some chance of succeeding. Numerous groups that have appeared before us, women's groups and others, have indicated that the rights established under the Charter of Rights and Freedoms should be made totally clear and should be clarified.

I quite agree it is very ambiguous in the way the Meech Lake accord is worded right now. It seems to me to need a simple, all-encompassing amendment such as you have suggested that any rights or freedoms that have been accorded to Canadians under the Charter of Rights and Freedoms should supersede and have primacy over the Meech Lake accord. That seems to be a fairly simple amendment.

We have heard every one of the 11 first ministers, one way or another, indicate that was their intention. If that was their intention, I do not see how making such a simple amendment to clarify the situation once and for all so that there can be no argument constitutionally, legally, one way or the other, could not carry today and why that would in any way, shape or form, even remotely jeopardize the agreement they have struck. It is clarified. That is what everybody says they intend.

I also hold out some hope this committee will evaluate the process. I think we all agree that the process that has gone on to arrive at the accord is not sufficient and certainly is not a very open process, with almost no public participation whatsoever, save and except perhaps the province of Quebec in between the first and second drafts. I think this committee will come up with some recommendations with respect to process and, hopefully, that wrong can be addressed in the future.

I would like to touch on a couple of items that you have not expanded upon too much in your brief. Every brief, of course, and every group comes at it from a slightly different point of view and that is good from our perspective, because we see and hear all different types of arguments and concerns that various groups in society have with the accord.

With respect to native or aboriginal peoples and their rights and their pursuit of self-government, the groups that have appeared before this

committee so far have indicated that they regard it as almost the ultimate insult that they are not even included as an agenda item in the next round of constitutional talks. One suggestion they made to this committee was that perhaps they could be included and have some primacy over Senate reform and fishery rights in Canada. Would you concur or not with that suggestion?

Mr. Orr: Obviously, I do not speak for the native groups in any way. Our suggestion for a couple of years now has been that if they were trying to bring Quebec into the Constitution and part of that process was to recognize the distinctiveness of Quebec as something that is fundamental to this country, then they would almost necessarily have to try to define the country more fully, to say what is fundamental to this country.

On our list of what is fundamental to this country, there has to be some mention of the aboriginal peoples and their special place in this country. Again, exactly how that is said, I do not know. It would be presumptuous of me to suggest how that should be said. But what we have said is that if you set yourself the task of trying within the Constitution to define fundamental characteristics, then you cannot overlook native people and native concerns. Even if you do not fully deal with the question, just taking that approach, the Constitution requires that you in some way give recognition to that fact.

So yes, we are supportive of the notion that native rights have to be addressed and native concerns have to be part of the constitutional process we are going through. What we say is that if we are building a Constitution, it has to pull together all the elements that are constitutive of the country. If we are trying to put forward a vision of the country, which is in one way what a constitution is, then that vision cannot be exclusive. That vision has to include all the major elements.

The Meech Lake accord takes a couple of tentative steps in the direction of defining the country. But the way they have gone about establishing a process or the way they are setting up that they will deal with constitution-building probably guarantees that some of those other fundamental characteristics of the country will not be recognized as fundamental characteristics.

It seems to me that if in this round or in this deal you are trying to start doing that process, you have to do it all or you have to do just about all of it, because we now seem to be in a situation where if this does go through, everybody is going to be a lot more alert next time around. Probably next time there will be much more debate and there are going to be possibilities, as the people from the north know, of blocking a number of essential amendments to the Constitution.

With this accord, we are not only creating a partial definition of the country, a partial definition that could be used, we think, in a way that compromises our interests, but also a new process, not just in terms of the negotiations but in terms of vetoes, etc.

It seems to me the fundamental difficulty is that a number of groups are not recognized and their interests are not recognized in this accord, but we are creating a process that probably guarantees that they will not get recognized. It would have been much more encouraging if native concerns and some other concerns, such as multicultural concerns, had been put on the agenda as the primary issues that had to be dealt with and not simply relegated to section 16 in what appears to be an attempt to mollify a political reaction from those quarters.

As far as we are concerned, all it did was compound the problem of section 2. I just do not think their perspective was clear on how they should be dealing with the legitimate concerns of a number of constitutive parts of the country.

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Mr. Eves: One of those parts may well be Canadians living in the Northwest Territories and the Yukon. I wondered if the Alliance Québec had any specific position on that.

Mr. Orr: In terms of a specific position, from our perspective this deal is a deal that the majority struck. A whole bunch of minorities, be they geographic, linguistic or multicultural, were simply ignored. There were attempts to put some of these groups into section 16 clauses. As I say, that just compromised the problem with section 2.

Some things were just not addressed at all like the northern peoples' concerns. To impose colonial status on the people of the north, probably in perpetuity, does not strike me as a particularly progressive way to approach the Constitution.

From our perspective, the bottom line is that when those 11 guys got together in the room, they were not thinking about the northerners, they were not thinking a whole lot about English-speaking Quebecers or French-speaking Ontarians. You can just go down through the list. That is what I think happened.

Mr. Allen: I am especially pleased that Alliance Québec has been willing to come and speak to us in the course of these hearings. I am very mindful of the very helpful and progressive position the alliance has taken with respect to minority rights issues in Ontario, where you have supported developments such as Bill 75, French-language governance rights, and you have made public statements and even taken out advertisements in our newspapers from time to time to tell us what you thought. We have all felt that was a very helpful part of the process, the political settlement of affairs in this province. So I am pleased that you are here.

I am pleased also that you are the first of, I hope, a number of groups from Quebec that will come to us and tell us what the accord looks like from the interior of Quebec and Quebec politics and those then set against the politics of the nation at large.

I am not entirely persuaded that we have lost all balance around the distinct society question in Meech Lake and I would like to hear more from you in that regard. I look at the construction of section 2 and I see that while it is true--and I would certainly lean to the side of those who suggest that Quebec does gain some new power out of this arrangement, because it is recognized explicitly for the first time in the Constitution that Quebec has a specific role with respect to the preservation and the promotion of a unique and distinct society in Quebec.

That language has never been in our Constitution before, even though some elements of the Constitution have recognized the difference in allowing the French and English languages in the courts, in the Quebec legislature and so on, and factors like that, and the sort of tradeoffs in the separate school systems in section 93 have had intimations of that. But that language has never been there, so the fact that it is there at all--while it is

interpreted, it is also substantive--I agree with you that does add some additional power, no question.

If you look at that over against your concern about a minority like yourselves in Quebec, there is also the part of section 2 that says it is equally fundamental that this nation beds down on a kind of cultural and linguistic dualism. Whatever else one says about other cultural groups and languages, that is where it beds down in terms of fundamental culture and language. Others, such as the Parliament of Canada, have a role in maintaining that dualism.

There is set up, in the tension between subsections 2(2) and 2(3), a tension between what the provincial government might do to promote distinctiveness and what the Parliament of Canada may do to protect dualism, if in fact Quebec would trespass on the principle of dualism itself, which is embedded in that section. It is not only presumably obligated in that section to promote but also to preserve and to protect dualism. There is certainly that element in that section.

I wonder if you do not sense that in that there are more tradeoffs than you have been willing to allow or more protections than you have been willing to state this morning in that section, which includes the "distinct society" language.

Mr. Orr: Let me start by saying that the alliance has, as I said before and will just repeat, supported and advocated the recognition of the distinctiveness of Quebec within the constitutional accord. But what we have said is that that distinctiveness is not to be promoted at the expense of fundamental rights. Our position has always been yes, recognize the distinctiveness of Quebec but recognize at the same time the primacy of the charter and not just the fundamental freedoms, although those are important, but also some of the other charter rights, like section 23 rights.

The fact of the matter is that in Quebec we have not yet had to go with a section 23 case for management and control of our school systems, but the reality is that the section 93 guarantee for our school system is an increasingly hollow shell in terms of protection. Half of the English-speaking students in Quebec are in Catholic school systems with no minority representation and the other half are in school boards that are becoming increasingly French Protestant. At least two school boards over the next five or 10 years will become majority francophone institutions in our province. It is beyond simply the fundamental freedoms question.

Having said that we support the notion of distinctiveness, as long as fundamental freedoms and other charter rights are protected, the dualism or the linguistic duality clause, as near as we can see, is just a simple kind of definition of the status quo. It is not a statement about language equality in this country. It is not an injunction in any way for the governments to do anything to promote the presence of either official language in any particular jurisdiction. It does not suggest that governments have to strive for a heightened use of either language. It is a very weak-kneed little piece of writing as far as I can see. It certainly does not go anywhere towards promoting bilingualism in this country.

Basically it is a statement about the status quo and a responsibility for governments to preserve the status quo. How do we interpret that status quo? At least some commentators have suggested that this might even be used by people who oppose bilingualism programs. That clause could be interpreted to

say, "Look. This is the reality of our province. There are French-speaking and English-speaking." It is not for the government to promote bilingualism because the Constitution says it is French-speaking and English-speaking. They are like separate groups of people and there is nothing to suggest that is something that is defensible. It is not me who is making that argument. Bryan Schwartz from the University of Manitoba has made that argument in his analysis of Meech Lake.

Again, I sense that when the first ministers came up with section 2, they tried to balance the "distinct society" clause with the linguistic duality clause. If that was their intention, then I commend them for it. If they really thought this was the best way to articulate the reality of the official languages in our country, then I guess that was the best they could come up with. But looking at it afterwards and reflecting on what it means, especially reflecting on the difference in language between "preserve" and "preserve and promote," I think we have to say that this is probably not the best way to articulate what the reality of language in Canada is, or better, what the reality of language in Canada should be, because it seems to me that the real problem with that clause is that there is no vision there.

There is nothing for governments to strive for. There is nothing there that we as a minority group can use to take to the courts to acquire something further on the part of government. It is simply a static statement about the current situation with nothing that gives anybody anything. I suspect l'Association canadienne-française de l'Ontario, for example, would support the perception that it really does not give anybody anything.

All it does is at one level prevent minority groups from using that clause to go and suggest that governments should be doing more to promote, because it does not say promote. At worst, it might be used in conjunction with the distinctiveness clause to suggest there are stronger powers accorded to the Quebec government here than to other governments. Again, it is difficult to say exactly what that means, but my reading of that duality clause is that it is a pretty weakening piece of writing.

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Mr. Allen: ACFO did indeed raise some serious questions before us with respect to the way in which the language seemed to suggest that the association was a museum piece to serve preservation rather than promotion in Ontario. I certainly sympathize with that. My own reading of that section made it appear to me that at least your position as a minority in Quebec might in the language on some interpretations at least be stronger than theirs here in Ontario simply because if one were to read "distinct society" as including the concept of dualism, there is at least the language of promoting that element in the Quebec case as distinct from the obligations on the legislatures outside that province.

Let me allude to two other items in passing. Clearly, resolving this question raises some other questions. First, how far in the course of this debate do we downplay the significance of the actual accomplishment of the charter? One almost senses in the play of debate and the presentations that come before us that now that we have Meech Lake and somebody wrote down a document a few weeks ago or a few months ago, therefore, what was done a few years ago in the charter has somehow or other lost its significance, lost its force, does not stand as a paramount accomplishment of Canadian federalism, which necessarily impacts on all aspects of our constitutional life in this nation. While one likes, and sometimes does hear, in law the language "for

greater certainty," one will repeat something that is already present in the Constitution. I am not entirely convinced how necessary that is.

Second, there is the question of the status of the Charter of Rights and Freedoms in Quebec itself, which of course does have reference to minority rights in it and provides a base for reference for the existence of court decisions in Quebec, like the one on Bill 1, which totally put the blocks to the provincial government's attempt to reduce the status of the Montreal school board to its original 1867 proportions in order to take over a whole terrain there of educational powers. The courts stood up very strongly in that particular case, so there are a number of capacities of reference, if you like, and supports that exist for you.

None the less, I want to come back to the central question in debate, which is that when we resolved the problems of the Constitution to the extent that we did in 1982, we did it on the basis of a charter which acknowledged a whole series of individual rights, but we did that very conveniently by putting to one side the biggest question of collective rights in the country, namely, the rights of an established large minority in the country which happens to be a majority in a province and, therefore, substantially has control of the single province when it wants to.

I am reminded that the Supreme Court of Canada, which is supposed to be the vehicle for the defence of individual rights under the charter, was no more balanced in the way it went about the abortion decision, for example, because it did it quite in its own language by putting to one side the whole question of the foetus for future determination. Whatever one thinks about that, that was sort of a halfway decision that left some other things to one side, just as the constitutional process did, so the courts in the constitution-making process have their limits in terms of the protections they give at any given point.

My sense is that when one deals, for example, with the rights of a collective majority which in turn is a minority, like the French community in Quebec, that government and that people are not in the same position in the overall texture of the nation as the English majority is in Ontario. You do not have to do anything to defend or even promote the English language in Ontario, although in looking at the results of the school system, some people might say perhaps you need a Régie de la langue anglaise in Ontario.

Inherent in the process is there not going to be an assertion of a collective right that pertains to Quebec that is always going to exist in some tension and leave you in some doubt with respect to individual rights, which you will always have to go to the courts to settle, and therefore any attempt to really square that off so that you have it perfectly solved in Meech Lake or anything else is an inherently impossible task?

Mr. Orr: On your first point about the Quebec government's powers to promote its being a distinct society and English-speaking Quebec being perhaps part of that distinct society and therefore our situation being better, I simply would say that you have to be very careful. What the government of Quebec is to preserve and promote is the distinct identity, because the language is different between one section and the next. If you are looking around to find out what constitutes that distinct identity, precise language is used in legislation on record; that is, Bill 101. If you look at the preamble to Bill 101, you will find a definition of what the distinct identity of Quebec is. I am not suggesting that is necessarily what was in the minds of the first ministers, but it will certainly be in the minds of lawyers when they come to argue that kind of case. That is one point.

On the second case, about the jurisprudence being a factor in decisions on certain things, you are quite right. On questions around section 133, for example, or section 93 in the Bill 3 case, in the Blaikie case about Bill 101, there is a very solid record of decisions. But on things like section 23, particularly around management and control on fundamental freedoms questions, there is very little jurisprudence about the situation in Quebec and how Quebec legislation may or may not impact, may or may not be interpreted or may or may not be accepted.

On the other point, about collective rights, this is of course a debate that goes on incessantly within Quebec and that we as Quebecers have among ourselves all the time--individual versus collective rights. I think you are quite right that there is something very different or distinct about Quebec. Basically, our position is that of a minority within a minority. We understand that. We understand the necessity of the Quebec government's taking steps to promote the French language. We have always accepted that; we have always supported that. What we have always said, though, is that it cannot be done at the expense of fundamental rights; our fundamental rights as Quebecers must be respected in that whole process of advancing what are seen as collective rights.

I have to question, though, whether "collective versus individual rights" is the right terminology to use in the Quebec context, because you are dealing with a collectivity in that case which is also the majority that controls the Legislature. Is it a collective right to have untrammelled parliamentary power? I do not think so. I think collective rights are something much, much more precise and much, much more controllable or definable. The way the term is used in Quebec often suggests that there should be no restrictions on the National Assembly, that it is a collective right simply to run the province almost. The reality is that that collectivity is also the majority, the very large majority; that collectivity will always control the National Assembly.

Things like language questions in Quebec are not so much collective rights questions; they are more like what we in Quebec call projet de société. The debate is not whether collective rights or individual rights will be pre-eminent; the question is, how far is it legitimate to use the power of the state to realize this projet de société of increasing the use of the French language? I think it is much more the power of the state in individual rights than individual versus collective rights on language questions in Quebec.

I agree with you that there will no doubt always be tensions on language questions and that there is no magic solution to putting these things in the Constitution. I remind you, though, what happened when the most nationalist government we have ever had, the government of Mr. Lévesque, looked at these two questions. In some ways, we have two fundamental challenges before us in Quebec: one is to protect and promote the French language; the other is to develop a democratic society that is respectful of fundamental freedoms.

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Quebec has one of the best human rights charters in the world. And I should note that on both the Canadian and Quebec charters, we have won the signs question in two levels of court. The Quebec charter is a fine charter. It is a very effective document. We know its effectiveness. But even Mr. Lévesque's government never suggested that Bill 101 should have pre-eminence over the Quebec charter. That was the resolution of that tension that Mr. Lévesque's government came up with.

We have two laws in Quebec that are called charters, the Charter of the French Language and the Quebec Charter of Human Rights and Freedoms. The decision was that the Quebec Charter of Human Rights and Freedoms was to be pre-eminent. That was the decision at the time. I still think that is the decision we should have. I certainly think from a Canadian perspective, when we are talking about the Canadian charter, that should be our perspective on things.

In the end, if the government of Quebec decides it is going to use the "notwithstanding" clause, once it has gone through the courts and the pre-eminence of the charter has been recognized and reinforced by those courts based on a strong Canadian Constitution, then I guess that is something the Quebec government has to consider, although I think we should be all of us working to get rid of the "notwithstanding" clause. But that is something the Quebec government has to consider.

I do not think it is for the Canadian political system to be thinking these things through and trying to decide just on what side of the fence you come down on collective or individual rights. It seems to me the Canadian system, the way we have been heading and the way we are heading, should be concerning itself with reinforcing the charter, reinforcing the protections, reinforcing the development of this whole new avenue for political participation by people who are otherwise cut off from winning just causes. I think we should be pushing that forward.

The question of collective rights in Quebec, I think is a very complicated question. It is a question that brings about a whole discussion of the powers of the state and the rights of individuals and just what you mean by collective rights, etc. I do not think it is the Canadian political system's responsibility to sort that out in Quebec; it is for us to sort that out as Quebecers within Quebec.

On the other hand, I do not think the Canadian political system should be shifting the balance one way or the other with an accord like this. My sense is that this shifts the balance towards a certain interpretation of collective rights, which I see as more unrestricted use of the power of the state.

Mr. Allen: Thank you for that very helpful answer. I appreciate that.

Mr. Cordiano: May I comment, Mr. Chairman?

Mr. Chairman: OK. But I still have two people who want to ask questions.

Mr. Cordiano: Very briefly, I just want to make an observation or a comment that may have been covered previously; certainly it has been discussed in our deliberations with other groups. There is a recognition by some that what clearly constitutes Quebec's distinct society is a number of elements and not just the French-speaking element; there is an English-speaking element and there are other people of different origins--in other words, from other ethnic groups--who constitute Quebec society. Would you agree with that view?

Mr. Orr: There is no question. We actually fought rather hard for that view in Quebec City when we did have public hearings between Meech Lake and Langevin. There was a whole debate in Quebec about whether or not Quebec should go back into the negotiations and ask for a definition of distinctiveness based on the French language. The decision was--and it is a

little bit ironic, because this argument was not used with respect to section 16--that to define in terms of the French language only would limit the impact of a clause recognizing the distinctiveness of Quebec society.

I support that. The alliance supported that. We believe we are part of what is distinct. We are the only English-language minority in this country. We believe there is a whole host of things that are distinct: the civil law courts, the Caisse de dépôt--you can go through the whole list. It is a distinctive part of Canada. But that being recognized, that recognition has to take place in a way that does not compromise any elements of that distinct society. That is our concern now. That is why we are suggesting that section 2 as it is written, taken in conjunction with section 16, compromises the rights of a part of that distinct society. That is our perspective, that that is a possible implication to this.

We are told by first ministers and by some people in governments that this was not the intention, but I think enough minority groups and enough respectable jurists have stepped forward and said this is a cause for concern that if the first ministers really did mean that this was not their intention then it is a relatively simple thing to fix that. If they did not intend to compromise fundamental freedoms, if they did not intend to step back from the charter in any way in this process, then they should make that clear. That is not that hard.

Mr. Cordiano: The difficulty I have with that is that there certainly is a lot of language expressed in any constitution--this is a point that certainly has been made over and over again, but any number of expressions in this Charter of Rights and Freedoms, for example "free and democratic society," any number of these expressions that we use in constitutional phraseology are vague to a certain degree. What do they mean? We leave that to interpretation in every case. I think that there is a great deal of interpretation being exercised.

Mr. Orr: I agree.

Mr. Cordiano: But the fact that we have a charter implies that we are going to have, as my colleague pointed out, a series of litigations before the courts, with groups coming before the courts seeking justice in their own eyes and using recourse to the charter as a means to do that.

Mr. Orr: Let me just share with you the message we, as English-speaking Quebecers, received after this accord was put through. I think what happened in a lot of provinces was that first ministers came running back, clutching this deal in their hands, and saying: "We've got this great deal. We've brought Quebec back in. And by the way, we've got a few extra powers."

What we got in Quebec was quite different, because when Mr. Bourassa and Mr. Rémillard came back to Quebec, the questioning was pretty tough. The questioning from the media was: "Well, did you get anything? Did you really get anything in this deal?" Obviously we in Quebec are a little preoccupied on these kinds of questions. These are the kinds of questions you face when you come back with a supposed deal.

In response to those questions and to some tough questions about whether they got anything, Mr. Bourassa in rather vague terms and Mr. Rémillard in very direct terms said that yes, they believed, with the "distinct society" clause, they would have ammunition--and the issue that is always debated, of

course, is the signs case because it is before the courts--to go in and make a stronger case for infringing the freedom of expression. We already know from two court decisions that the freedom of expression is probably compromised unjustifiably by this legislation.

Mr. Rémillard said, "Well, I think we've got this." Mr. Bourassa and Mr. Rémillard said, "We think we've got more ammunition to go back in and fight this one," basically to compromise fundamental freedoms--from our perspective, freedom of expression. Then Mr. Rémillard said explicitly, and Mr. Bourassa said in a radio clip, that in the end what this did was give political justification for the use of the "notwithstanding" clause, even if they did not get any accrued powers.

That was the message we got when this deal was brought back. It was not a message that said, "Oh, isn't this grand that Quebec is brought into the Constitution." It was, "We have some extra powers here that we think compromise freedom of expression, and if not, a kind of recognition of the distinctiveness of Quebec's society will make it easier for us politically to use the 'notwithstanding' clause."

Mr. Cordiano: I understand that. You brought it to a political level. That is quite different from--

Mr. Orr: But it is political and necessarily it is political.

Mr. Cordiano: Yes, but I am looking at what in fact would be the determination of the court looking at these questions and not so much in the political realm. We would like to think that the Supreme Court of Canada will not be--

Mr. Orr: But as long as the "notwithstanding" clause hangs up there like a sword of Damocles, I do not care what the Supreme Court decides. If we go through four or five years of public sentiment saying, "Well, there is a recognition of Quebec's distinctiveness and that means we can protect the French language, etc."--if that is the rhetoric that is used by a government, it is going to get into a court case, there is going to be a decision around a freedom of expression case, maybe in favour of the group that is seeking protection of freedom of expression, and the government is going to turn around and say, "But we are distinct; that has been recognized for four years," and they are going to use the "notwithstanding" clause.

The political price to pay, which was supposedly the justification for Liberal democrats allowing a "notwithstanding" clause to go through in the first place, is going to be very, very substantially reduced by the recognition of the distinct society.

Mr. Cordiano: You are referring to section 33 of the charter, which has existed from the beginning; it certainly was exercised by Quebec all the way through.

Mr. Orr: It was not a part of these negotiations, although I think it should have been part of these negotiations.

Mr. Cordiano: No, it was not. That is a separate issue entirely.

Mr. Orr: I do not think it is a separate issue. I do not think you can pick and choose in the Constitution. You can pick and choose as a lawyer, and the judges and the justices can pick and choose, but it all becomes a package; it all becomes a vision of what the country is.

Mr. Cordiano: So your view is that we should do away with the "notwithstanding" clause, section 33 of the charter.

Mr. Orr: In our brief, clearly we believe it should be done away with. I do not say in this deal, but certainly when you as a government are discussing what your next constitutional gambit is to be, it seems to me that is one of the things we have to address as a country.

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Mr. Williams: I am not a constitutional lawyer, but there is an alliance report that I have also brought; it is not part of our brief, but I think it is important that I bring it to your attention. I would like you to know in people terms some of the issues that we are living with.

With the Quebec charter, we won unanimously in the Court of Appeal. We won not on integral bilingualism; we won on the obligation of French on all signs and the right to other languages. The government of Quebec is appealing that decision; it is not appealing a decision of institutional bilingualism but the right to have something other than French. That is number one we are living--just in terms of why we have doubts here.

The cinema law right now means we will not get certain English films in of Quebec unless they are dubbed in Quebec in French. There is the welfare reform that has recently been tabled: the English-speaking communicably was basically neglected in that. In December 1986, Bill 142 was passed in the National Assembly guaranteeing English health and social services for the first time; it is similar to Bill 8, but there was quite a battle to get it through.

The Office de la langue française just recently revoked the bilingual status of a municipality; it happened to fall below 50 per cent, and they automatically just revoked it. The bilingual status did not force that town to do anything; it just gave them a right to do things other than in French.

That is the kind of reality we are living. That is the intent. There are certain limitations, as in article 1, but there are things that go beyond that. I suggest there is enough doubt in the new accord to really put in question the intent of some of those ministers on a daily basis.

Mr. Elliot: I would like to begin what I have to say by apologizing to the private citizen who is waiting patiently to present. Thank goodness somebody opted out this morning, or we would not have had nearly enough time to talk to you the way we wanted to. I think this is due in part, as somebody said, to yours being the first presentation from Quebec. I think it is also due in part to the best living example we have got right now of how difficult the resolution of this problem is going to be, because in a committee of 10, like we are, I think when you look at the clock and realize you have got about an hour to talk, and a couple of the committee members use up two thirds of that time, it leaves the rest of us with very little time to make the points that we would like to make in our presentations.

I would like to go back to the beginning of your presentation. My question is a little bit futuristic and winds up on the point that you were last making, so it is sort of a supplementary to what you just talked about.

I was pleased at the beginning when you said that you were not coming here to get us to fight your battle in Quebec, because I feel that the

English-speaking minority in Quebec has to resolve its problems within Quebec with the French majority. However, having said that, in the context of the answers that have been given, I think we are in it together very definitely, and you are looking to us for leadership, at least from the point of view that we have a committee struck to address the Meech Lake accord. Possibly Manitoba may have a committee, and possibly one other province may have a committee. Only one person--that is, a Premier--is in a position to actually reject the accord at the present time. This is the reality that we are part of, and I think we are all talking about nation-building here.

What I am finding is this sort of narrow point of view with respect to particular interests. I hope that this narrow point of view with respect to particular interests, because those people argue their points so definitively and so well, will finally be taken in the whole context.

Where we are at in Canada--and I think you alluded to this in your last answer--is that we have got our own Constitution now, we have got our Charter of Rights now, and just recently we got a constitutional accord that we are trying to say yea or nay to. I submit that your comment with respect to taking all of these things into consideration when you are judging one particular aspect of life as we know it in Canada is the most important concept that we have to address here.

The other thing from a committee point of view that is coming through loud and clear, and came through in a lot of your answers, is that just about everybody who comes to us is demanding consultation before the fact as opposed to after the fact. The process by which we came to this accord is flawed; it has got to be changed in some way. I think everybody in Canada is going to demand that kind of consultation. That is really what I want to address my question to.

The other realization we have to keep in mind when we are talking about consultation is that somebody finally has to make a decision. With respect to constitution-building, at the present time it is 10 premiers and a Prime Minister; hopefully, we will be able to negotiate maybe more input than that, but at the present time it is the famous 11 who do it. They have to make a decision, hopefully, based on consultation.

My question has to do with the street sign question in Quebec. This is the kind of dramatic thing that people can point to to say that that is really a bad news situation from an Ontario point of view. They can point to Toronto and say that in an area of Toronto we have Greek street signs for various reasons. A lot of it has to do with a lot of recent immigrants who want to be able to read the street signs. In the Chinese community, it might be because it is tourist area. There are a lot of valid reasons for having street signs in languages other than the one language that is predominant in a particular province.

Because we are talking about this compromise of fundamental freedoms, do you think as an English minority in Quebec that you will be allowed to consult in a meaningful way with the French majority at this point in time?

Suppose this committee is able to propose something long range, because in nation-building, you are not going to do it with a single thing, as my colleague from across the room says. Having a court challenge and deciding the thing once and for all tends to be the point of view that we have got. It is not going to wash.

You alluded in your comments to the fact that probably the override feature for five years will be employed if Quebec loses the present court case. So we are talking about 1993 in that one challenge alone. A single court challenge is not going to settle this issue. It is farther than that. What is going to settle it is a meaningful dialogue among various groups of people in our country. One of the most significant dialogues has to happen in Quebec between the English-speaking and French-speaking people.

Mr. Orr: There is no question that that dialogue has been happening for the last several years. Alliance Québec was set up precisely to try to encourage that dialogue and I think we have been successful in a lot of areas. You are quite right. It is worth my repeating that we are not here to ask for Ontario to intervene directly in some of these questions in Quebec. We are prepared to fight those battles. We are prepared to create those debates and dialogues. We are prepared to do what it takes to make sure our community has a future.

I think you are also right that language issues, in particular, do not stop at any one border. Language issues and the treatment of a minority in any one province become grist for the mill for people who oppose language reform in another province. Just a couple of weeks ago, I was in Ottawa talking with members of Parliament who were opposing the new Official Languages Act supposedly on the basis of the treatment of English-speaking people in Quebec. That is just not legitimate. Obviously, there are problems and we are working on those problems, but to suggest that you are going to improve the situation in Quebec by blocking a piece of legislation that is important for our community is just an absurd kind of thinking.

The fact of the matter is, as I said quite a bit earlier, that in Canada now we have more and more governments who are taking on their responsibility for language reform. Ontario clearly has done that. New Brunswick has done that. Manitoba tried and was scared off it, but maybe it will come back and do that. Even in some of the other provinces, we see some tentative steps towards taking responsibility for language reform. It has to be said that in Quebec it is not a black picture. We would not be there if it were completely unacceptable, but there are problems we are dealing with and we are working on them.

More and more governments are taking responsibility for this, and it seems to me more and more governments therefore have the responsibility to give national leadership on these questions. In the Meech Lake accord, clearly we are talking about language matters. That is one of the pre-eminent things. The first characteristic we are talking about is language. For the first ministers to step back at this point and not impose upon themselves--even in an opting-in formula, for example, the way the Fédération des francophones hors Québec has suggested--a constitutional responsibility to promote both official languages is just beyond belief for me.

Sure, there may be some premiers and governments in this country that are not ready to take that kind of step, but there are other governments that are ready to take that step and it is time for them to take that step. It is time for them to say publicly that language matters are not contained in any one province. It is legitimate for the government of Ontario to be concerned about minority-language issues in Quebec, New Brunswick or wherever else, just as the Quebec government has traditionally been concerned about minority-language treatment in other provinces and the situation of francophone groups in other provinces.

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I agree with you that it is a process of nation-building and I agree with you that court decisions are not the only or the pre-eminent way to go about nation-building. On the other hand, we do from time to time get ourselves into situations where the court option is the only option, especially for minorities within a province, and we have to ensure that in that process of nation-building, in those discussions, and in those governments taking on their responsibilities to speak out on these issues that, at the same time, the minorities themselves have the tools to make sure that their rights and interests are respected and advanced in whatever jurisdiction.

I agree with you; it is nation-building. I agree with you; it is long term. I agree with you that everybody has to speak out on these things. I also think we agree that minorities themselves have to be given certain basic tools in terms of charter rights and other protections to guarantee their interests. I also agree with you that we are in it together because we are talking about the Constitution of Canada and we are, after all, all Canadians. It is a national initiative.

Mr. Chairman: Thank you very much for spending a good deal of time with us this morning. I think, as Mr. Elliot pointed out, in some ways it has been fortunate that we have had time to explore some of these issues, in particular, the whole question of minorities, as has been mentioned. We have heard from the l'Association canadienne-française de l'Ontario. That whole aspect of official language minority groups is one which is obviously very important to us.

I think your observations on the relationship between the distinct society and how those official language minorities can be protected is very important and it is something we have to look at very carefully. We thank you very much for your presentation, for your brief and for coming and being with us this morning.

Mr. Orr: Thank you.

Mr. Chairman: I now call on John Pepall to come forward to present his brief. I believe we have a copy of your submission, Mr. Pepall, which has been distributed. We all have a copy of that. Let me also apologize that we are running behind, but we will certainly listen carefully to your comments and suggestions. Perhaps you would like to begin with your presentation and we will then follow it up with questions.

JOHN T. PEPALL

Mr. Pepall: Thank you, Mr. Chairman. I am happy to be able to appear here any time the committee could hear me. I have enjoyed following the hearings of the committee both live here this morning and on TV. Before dealing with the specific points I raise in my brief, I will make three comments that arise from reflections I have had in following the hearings before you and also one point that puts my submission in context.

You can see from my brief that I am vehemently and comprehensively opposed to the resolution before you. It may seem that the position I take is eccentric and hopeless. On the other hand, in that position I have not the consolation of feeling that I am original because I think it is fair to say that each of the major points I make in attacking the resolution has been made already by many eminent people and was made indeed immediately after the terms of the Meech Lake accord became known.

I suggest that it is important that the committee take this into account. There is something wrong with a situation in which we can be here facing what, as many people have reflected, may be a fait accompli when, in fact, there are very many serious, widely held objections to it. It is a matter of concern that our political institutions have somehow or another not been able to reflect these concerns and reservations.

This is not like an ordinary bill that may come before you where, I suggest, you simply have to be satisfied yourselves that it is right and for the benefit of the people of the province, and if you should pass it and if experience shows it is not so good, then you can have a second look at it, amend it or repeal it. In constitutional matters, I suggest, you should not be passing anything, even if you think yourselves that it is good, where there are serious objections and these have not been accommodated.

The second preliminary point I want to make is that obviously a great deal of your discussion has covered the point that it is unclear what particularly section 2, the "distinct society" provision, means and what many of the other provisions mean. You have had before you putative experts to tell you what it means. To some degree, what they have said has been contradictory and to that extent, you may feel, unhelpful, simply compound your confusion. Some of them have attempted to assure you that it is all quite clear what it means, that it does not really mean anything very much or that the courts can work this out along traditional lines. I suggest that any assurances you may have had from law professors or other putative experts on these matters are, unfortunately, worthless.

The language in this accord is unprecedented. It is going to go in a Constitution that is only really five years old. The fashion in constitutional jurisprudence that is promoted in the law schools of this country is to be creative, imaginative, forward-looking and so on. I suggest that it is simply impossible to know where any of this may lead in the long run except to say that it is going to leave fundamental political issues being decided by the courts rather than by the legislatures and Parliament, which I suggest is where they should be decided.

I know there has been some consideration of the possibility of clarifying some of the uncertainties by way of a reference, and I suggest that is not an available option in this case. You can have a reference, as was the case with the separate schools issue, where you have a specific piece of legislation and you can ask the court, "Is this consistent with the Charter or not?" but you cannot really ask the court to say, "How will section 2 affect the Charter now and in the decades and centuries to come?" The question is too general, and I do not know whether the courts would hear it. If they would hear it, I am afraid any answer they might give would be of little or no value.

Finally, I think perhaps most of the people who have appeared before you have been representatives of organizations of Indians, women, the handicapped and several ethnic groups. Their general theme has been, "There is nothing in this for us." If anything, the fact that there is something in it for Quebec is perhaps an injury to their specific communities or constituencies and something should be done to reflect their interests in the Constitution at this time. I suggest that however compelling you may feel the concerns of these various organizations are--and no doubt many of them are--the answer to their concerns is not in the Constitution.

The Constitution should not attempt to deal with substantive issues; it should deal with the framework, the institutions and the powers of those

institutions. We should not try to burden the Constitution--it is already too much burdened--with formulae, slogans, some kind of friendly language for each community of interest group in the country, however much you may be concerned to assist them. That is your job as legislators in the bills you pass and in your scrutiny of the government's activity. It is not your job as constitution makers. The Constitution should be made from the framework, and to the extent that you add general formulae to try to accommodate the interests of specific interest groups within the community, you are just going to create problems. The results may be very far from what people who ask you put this kind of language into the Constitution expect, and it is just going to add to the burden of the courts in interpreting the already fairly obscure Constitution.

I will turn now to my brief, which I will try to go through quickly. I refer in it to the various provisions by the sections they would be in the Constitution Act if the resolution were passed. I begin with section 2. The language of the proposed section 2 is so general, evasive and unprecedented that we can only speculate what its legal effect may be over the long term. Passed into our fundamental law, it amounts to a blank cheque to the courts to tell Parliament and the legislatures what they must do and not do beyond the specific language provisions of the Constitution Act about the fundamental characteristics of the country and Quebec's distinct society.

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Any effect of section 2 on the charter is only a small part of its importance. The charter itself is so obscure that it would be wrong to worry that section 2 will weaken it. Under section 2, the whole field of relations between French and English Canada, the perennial theme of our history since the 16th century, is made subject to judicial review. Not only the errors but the omissions of Parliament and the legislatures, under whatever theory of these matters may appeal to judges in generations to come, will be subject to their orders.

In informal discourse both recognitions may seem recognizing the obvious, but what is obvious today may not be obvious tomorrow. If English-speaking Quebecers choose to leave or to be assimilated in a largely officially unilingual province, the presence of English-speaking Canadians in Quebec may not longer be a fundamental characteristic of Canada. What are Parliament and the legislatures to do about it? If, as is the case despite de facto and de jure official bilingualism in Ontario and the other provinces with a significant population of French-speaking Canadians, French-speaking Canadians continue to assimilate, what are Parliament and the legislatures to do about that?

The fundamental characteristic is to be preserved but Quebec's distinctness is to be promoted. Quebec's role in preserving the fundamental characteristic already conflicts with its role in promoting its distinctness. The cross-party consensus in Quebec is in favour of promoting its distinctness and preserving its Frenchness by unilingualism. Unilingualism must tend to reduce the English presence in Quebec and thus detract from this aspect of the fundamental characteristic.

A constitution, particularly one as difficult to amend as Canada's now is and may soon be, is not made for the near term. The evolution of the French- and English-speaking communities in Quebec and the rest of Canada over the medium-term to long-term is unpredictable and judgements on what should be done about it will evolve, if anything, more radically and more unpredictably. Whether the proposed section 2 is to be read as futilely insisting on the

preservation of the exact status quo, the exact proportions of English-speaking and French-speaking Canadians across the country, or as only vaguely setting a direction, it will operate as the subjection of the Parliament and the legislatures to the general and indefinite supervision of the courts in place of the democratic resolution of such issues as may arise.

The legal effect of this section must be to pass power from Parliament and the legislatures to the courts. It assures no specific outcome and may lead to dangerous conflicts between the courts and our democratic institutions. The power to strike down democratically approved laws given to the courts by the charter can be unsatisfactory. Whatever one thinks of the Morgentaler decision, it cannot be satisfactory that it results in a legal vacuum until Parliament passes legislation consistent with it. It is a dangerous extension of the power of the courts to commission them to require Parliament or the legislatures to adopt laws in fulfilment of their roles under section 2. Unless it is entirely meaningless, that is what section 2 does.

Section 25: A bicameral parliament works only where the upper House will only rarely reject or substantially amend measures passed in the lower House. If the devolving of the power to nominate senators to the provincial governments is to amount to anything more than sharing out patronage plums, it will lead to senators attempting to interfere with the national government's legislative program in the political interests of the provincial governments that nominated them. This will weaken the national government, which must be free to act within its jurisdiction under the Constitution Act without provincial interference. It will dangerously increase the possibility of a deadlock between the House of Commons and the Senate. The limited power to overcome a deadlock, by the appointment of extra senators under section 26, will be seriously diluted by provincial leverage through the power of nomination.

The requirement that senators only be appointed from persons whose names have been submitted by the provincial governments will lead to friction and impasses over appointments. In most cases, no doubt, appointments will be worked out to the rough satisfaction of the provincial and national governments. But that cannot always happen as governments with conflicting political wills play a game of chicken, with the provincial government threatening ever-more unacceptable nominees and the national government a prolonged vacancy. Relations between the national and the provincial governments will be poisoned and Senate appointments will become a form of low comedy. As the courts become more free-spirited in the interpretation of the Constitution Act, encouraged by its open language, they may be come dangerously involved in attempts to break impasses over appointments to the Senate.

Sections 95A to E: Nothing in the Constitution Act, as it stands, prevents Parliament from passing legislation to accommodate provincial wishes on immigration. The effect of the proposed sections 95A to E is to entrench in the Constitution Act agreements between the national government and a provincial government on immigration. They enable the national government to bind future parliaments indefinitely to an agreement with a provincial government on immigration by simple majority resolutions in the House of Commons and Senate. They will result in a damaging reduction of the basic power and responsibility of the national government. As admission to any province is admission to the whole of Canada, immigration is essentially a national concern in which the national government has always had paramountcy since 1867.

Sections 101A to 101E: The entrenchment of the Supreme Court of Canada will make the organization of final courts of appeal in Canada inflexible and subject to political constitutional negotiation. Already before the Constitution Act, 1982, the Supreme Court of Canada was severely burdened. Section 101A will make expansion or division of the court, practically speaking, impossible.

The requirement that appointments to the Supreme Court of Canada be made from nominees submitted by the government of Quebec for the three civil law seats or the other provincial governments for the rest implies and is based on the presumption that the judges have represented and will represent the interests of the government that nominates them. This is a fundamental attack on the independence and freedom from bias of the judiciary.

There have never been any grounds for this presumption. The entrenchment of provincial nominations to the Supreme Court of Canada gives constitutional sanction to the theory that its judges should serve the interests of the provincial governments and will damage the authority of the court.

Friction and impasses over appointments, particularly from Quebec, are bound to occur and will acutely damage the court. As with Senate appointments, it is possible that the court will become involved in breaking impasses over appointments, an appalling prospect.

Entrenchment, together with the vastly increased constitutional responsibilities of the court, practically all of whose time will likely be taken up in making final decisions on constitutional cases--

[Interruption]

Mr. Chairman: My apologies. We will resume.

Mr. Breaugh: Usually, we are the ones who put them to sleep.

Mr. Chairman: I do not know whether it was a dream about the Constitution or what.

Mr. Pepall: I am happy to have provoked some kind of reaction at least.

Mr. Chairman: Please continue.

Mr. Pepall: Entrenchment, together with the vastly increased constitutional responsibilities of the court, practically all of whose time will likely be taken up in making final decisions on constitutional cases that have worked their way up to it or been directly referred to it, will result in the separation of the Supreme Court from the whole body of inferior courts, whose work will remain a mix of ordinary cases at law on which they will generally have the last word and constitutional cases on which they will never have the last word. Its position as an almighty political court above the law will both corrupt it--all power corrupts--and injure its authority.

The entrenchment of the Supreme Court of Canada in the Constitution is a particularly pure case of the craven emulation of American constitutional arrangements. As we imitate the United States, we should note that respect for their Supreme Court has been greatly injured in recent years and will likely continue to decline.

Section 106A: It is already objectionable that Parliament is paying for national shared-cost programs in areas of exclusive provincial jurisdiction under the Constitution Act. Where a national program is desirable, the provincial government should give up jurisdiction and let taxing, spending and responsibility rest altogether with the national government. If there are to be such programs, there is nothing to stop the national and some provincial governments agreeing on opting out and consequent financial arrangements.

The proposed section 106A will give the provincial governments an automatic no-cost option of opting out and will require the courts to judge whether a province carries on a program or initiative that is compatible with the national objectives and what reasonable compensation for the opting-out province should be. The involvement of the courts in the detailed assessment of political programs and financial tradeoffs between the levels of government is wholly unacceptable.

I have made several comments in my brief about the wording. I have not bothered to repeat them to you today, but I will in this case. In the proposed section, the use of the political phrase "the government of Canada" is particularly inept. The government of Canada has no money except what Parliament votes it. It is Parliament that will have to provide such reasonable compensation as the courts decide, and this bad provision, if it must pass, should say so.

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Section 148: The emergence of so-called first ministers' conferences in the past 25 years as a major feature of national politics has already injured our political culture and institutions. They have confused responsibility, distracted governments at both levels from their work and seriously undermined the authority of the national government in its own jurisdiction. Such meetings, if not banned outright, ought to be rare and informal. To entrench them in the Constitution is grotesque.

The Prime Minister and the provincial premiers are simply primus inter pares ministers running committees of ministers responsible to their respective Parliament and legislatures. Their place in the simple but strong and profoundly good constitutional institutions developed in Britain and the Commonwealth in the last 300 years is entirely inconsistent with their appearance as great sovereign princes regularly meeting in solemn conclave to settle the nation's affairs. As has probably happened with the measures before you, this corruption of our political culture and institutions has severely damaged the authority of Parliament and the legislatures by presenting them with what are effectively fait accompli.

Section 40: This proposed section will encourage no-cost opting out by provinces from transfers of jurisdiction. Canada needs stronger national government and easy transfer of powers from the inflated provincial jurisdiction to the national government. This provision will make transfers more difficult. Again, the courts are to decide what reasonable compensation would be. This decision will be particularly difficult for the courts. In the case of compensation for national programs opted out of, under the proposed section 106A, some measure of financial compensation will be available in the level of national spending on the program opted out of. With a transfer of jurisdiction, compensation will depend on what is done with the jurisdiction. The national government may choose to do little, using the jurisdiction to keep the field free of regulation and interventionist spending. The opting-out province may keep the jurisdiction to do just the reverse. The courts will be faced with making impossible and politically charged judgements.

Section 41: The requirement of unanimous agreement on amendment of any aspect of the Constitution puts the country in a constitutional straitjacket. The history of Meech Lake and human politics means that this will lead to bargaining which already overmighty provincial governments make demands on the national government in exchange for their consent to amendments. With such a prospect, it may be better to regard the Constitution as unamendable.

Section 50: The requirement of annual constitutional conferences will perpetuate the constitutional distractions of the last 20 years of Canadian politics. It should be remembered that the conferences in 1864 that led to Confederation were not of first ministers but of delegates of the respective Legislatures. They met, of course, not to take power for themselves out of the constitutional impasse but to give up power to a new government and to build a nation, not to carve it up. The whole course of the debates leading to Confederation should put to shame those who participated in the squalid proceedings leading to the measures before you and who vainly and arrogantly claim to be new Fathers of Confederation.

The holding of annual constitutional conferences in the face of the near impossibility of amending the Constitution under the formulae in sections 38, 41 and 42 is idiotic. It will invite an endless parade of lobbies to push, not for the democratic redress of their legitimate grievances, but the further encumbering of the Constitution with vague, inflexible formulae to be interpreted by overburdened, irresponsible and politicized courts.

A word about Quebec: Meech Lake, we are told, was necessary to get Quebec to join the Constitution, or some equally nameless phrase. There was no need to have Quebec join the Constitution. The Constitution Act has full and unchallenged legal effect without the support of a resolution of the National Assembly.

It is all for nothing. Who can suppose that when Quebec nationalism resurges again in 10 or 20 years, as it has done again and again since 1759, we will simply say "Meech Lake," and all will be well? Who can suppose that when tomorrow's separatists are threatening, they will be daunted by the thought that their demands are subject to the veto of Prince Edward Island?

Quebec can join the Constitution and smile on us because it knows that whenever it calculates the Confederation or the threat of separation alone are no longer profitable, it can go its own way with a strong national government, already the strongest in Canada, and all the Constitution Acts in both official languages you could pass in a century, if you gave your time to nothing else, would not hold them up a minute.

Finally, the courts: The charter has greatly burdened the courts with difficult and dangerous political decisions. It can be argued for the sake of fundamental rights and freedoms, whose history is tied in with the development of our law, this is satisfactory. It is another thing entirely to burden the courts purely with the settlement of purely political issues: the supervision of relations between English and French Canada, the possible settlement of disputes over Senate and Supreme Court appointments, the supervision of immigration policy, the assessment of national programs and objectives and compensation for opting out of them. Courts are the wrong institutions for the settlement of such questions. Their involvement in them will politicize them.

The "notwithstanding" provisions of section 33 of the Constitution Act limit the irresponsibility of the courts for the larger part of the charter provisions. These provisions were thought necessary in 1982 to preserve

parliamentary sovereignty, which is fundamental to our democratic government. They do not and cannot apply to the dangerous political powers given to the courts by Meech Lake. With amendment of the Constitution near impossible, the irresponsibility of the courts is nearly perfect.

In conclusion, the provincial governments in Canada were established and continued as simple instruments of the public good, easily adapted or put aside as circumstances required. Such was their history up to 1867. One hundred years of constitutional stability and the settling of political interests in the existing governments gave them a false appearance of permanence. The constitutional wrestling of the last 20 years has led to the provincial governments becoming de facto sovereignties. They have consistently sought increased power without regard for the national interest from the politician's instinct to seek more power wherever he can most easily lay his hand on it.

We can either trust ourselves from sea unto sea to run our public affairs together or we cannot. If we can, our democratically elected national Parliament should be free to govern the whole country without provincial or judicial interference. If we cannot, the answer to our mistrust will not be to tie down and make impotent our national parliament, but to accept that we must, to a degree, separate.

I do not believe Canadians want either outcome, but as our Constitution is remade by bargaining between 10 provincial governments and a solitary national government to speak for the national interest, they will get an impotent national government and, finally, the logical sequel in separation. All the provincial governments have gone into this latest bout of constitution-making looking for greater power at the expense of the national government under the cloud of "national unity" and "bringing in Quebec" rhetoric.

It is a sad but not surprising show of human nature that this should be so. But it need not be so. Each of us, whether in provincial government or private citizens, must judge the provisions of our Constitution by whether they serve the interests of Canada as a whole. Ontario should be pushing for a stronger national government, offering to give up jurisdiction to Parliament and leading other provinces to do the same.

The resolution before you will greatly injure our country. I urge you to reject it. If you do not, the damage done may be irreversible and in the long run fatal.

Mr. Chairman: Thank you very much for the submission and what clearly is something you have given a great deal of thought to and argued very forcefully. You raise a number of very broad issues, apart from the specific comments on the different points. One of the things we wrestle with is your use of the terms "Canada as a whole" and "national." It is trying to determine what constitutes the national will, national power or Canada as a whole.

I take it from your submission that at this point in our history what you really are saying is that the provincial role should become a diminished role and that the federal government really should increasingly not only be seen to be, but become, the national government. Would it be fair to say that underpinning a lot of your comments is that thrust?

Mr. Pepall: Yes, and I do not think that is a very unusual position, though it is not one that has been reflected in the Meech Lake accord. In

addition to that, whatever powers the national government is going to have, whether they are to be less than they have been or more, it should be able to exercise those powers freely without interference from the provinces. The provinces should not be able to have it both ways; that is to say, having a large exclusive jurisdiction and being able to interfere in the national government.

Suppose you reversed the roles and imagined a situation in which the national government was continually intruding into provincial affairs. If we revived legislative councils, for instance, through the provinces, and said that the national government would appoint the members of those legislative councils, we would all agree that would be absurd. It seems to me that various proposals in the Meech Lake accord are equally absurd.

Mr. Chairman: I suppose part of the argument is whether the federal government is appropriately a national or the national government or whether there is not from 1867 on, whatever John A. Macdonald might have preferred, something about this country whereby it is a federal government and a federal government for a reason, and whether we can make some of those changes, whether they are good or not, and that the provinces have existed because of a lot of other factors that go into making up Canada.

In your definition of the national will, where does the province or that expression come into the equation?

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Mr. Pepall: I think a kind of confusion has arisen as a result of the history. There is, as I think I suggested towards the end of my brief, one unmistakable national government in Canada with a National Assembly and that is in Quebec. Its vocation, if you can call it that, as the national government of the French-speaking nation in North America is something they insist on. It is in a sense behind their pursuit of the formula of a distinct society and so on.

The presence of that nation and its national government in Canada has made it, let us say, impossible for the government in Ottawa to pretend to be in the same sense a national government. As a result of that, the various provinces to the west of Quebec and the maritime provinces, out of political interests that I suggest have nothing to do with any serious need to serve the interests of any particular region, subnation, community or whatever--It is simply because they are there and the easiest way of advancing the power of the provincial politician is to get more power for provincial governments. It is easier in many cases historically. Particularly for provincial premiers, it is easier than the transition from provincial to national politics.

The provinces have tended to go along with any demand that Quebec makes and weakened the national government as a result. Whatever accommodations may have to be made for Quebec, I suggest that so far as the rest of Canada is concerned, we need a stronger national government and the only one we can have is in Ottawa. What we are getting out of Meech Lake and what we got to some degree out of the 1982 settlement and the history since 1867 have been a continually weakened national government and provinces that then have to seek money from Ottawa in order to carry on the responsibilities they insist on maintaining and so on and the great confusion of responsibility that has injured our politics.

Miss Roberts: What you are indicating then is that the Constitution,

as you see it now, has been watered down, was watered down in 1982 and is continuing to be watered down. Is that fair?

Mr. Pepall: The strength of the national government, certainly.

Miss Roberts: That is right, but also Canada itself.

Mr. Pepall: Yes.

Miss Roberts: Any step we take, even dealing with the Constitution that was set up in 1867, is a watering down. If we forget about Meech Lake and just deal with 1982, that act and the charter, that watered it down to something that is not acceptable to you either.

Mr. Pepall: No. I do not consider 1982 satisfactory, but I think that the injury done in 1982 was small in comparison to what this will do.

Miss Roberts: On what basis? Just because it is to recognize Quebec, section 2 basically or each one is equally as destructive?

Mr. Pepall: I think that permitting the provinces to attempt to gain leverage over the national government through Supreme Court appointments and through Senate appointments, by giving them easy ways out under the opting-out provisions so that they can take federal money, but not have to live with federal policies except in a vague way as the courts may decide, by the extension of the veto power on constitutional amendments, all of these things mean that the provinces have greater powers and greater leverage over the national government. Each one of them injures the national government. I think that each of them in itself is more significant than the injuries that may have been done in 1982.

Miss Roberts: Just one last thing. What you are indicating then is that the provincial governments are taking over so much power and the inappropriate thing is writing them in the accord. Although it has been argued by some that they already had that power or they may have already had that power, we should leave them outside of the Constitution and let it evolve the way it has since 1987, using the courts for the purposes of interpreting the various exclusive jurisdictions set out in sections 91 and 92, I think, of the Constitution of 1987.

Mr. Pepall: Yes. The only issue that has been dealt with in Meech Lake is Quebec, and I have suggested that, basically, it has been dealt with in a phoney way; it does not actually serve any purpose in accommodating Quebec. It may produce cordial relations between Mr. Mulroney and Mr. Bourassa but it does not go beyond that as far as I can see.

Beyond that, it does not seem to me that Meech Lake really deals with any pressing issues; it is just part of this game of constitution-making which we seem to want to turn into a kind of annual festival. The first ministers cannot keep their hands off the Constitution; they all want to be Fathers of Confederation and, in the course of time, one hopes, Mothers of Confederation.

Miss Roberts: We are looking forward to that.

Mr. Pepall: Yes.

Mr. Offer: On page 2 of your brief, I want to carry on with discussion of the distinct society being one aspect of section 2. I take note

that in the first paragraph in the last couple of lines--please correct me if I am reading it wrong--I sense that you are saying that there is, for want of a better word, a hidden agenda by Quebec to promote unilingualism within the province.

Mr. Pepall: I do not think it is hidden; I think it is quite expressed. What you heard this morning about--it can seem a trivial matter, but there are other examples--the fines law forbidding the use of English on signs in Quebec is quite obvious. I do not think Quebec is being secret or furtive about it. I do not even say they are wrong. I am just saying that gives some meaning to the idea of the promotion of a distinct society, and it is not one that I think is generally acceptable.

Mr. Offer: So this concern of yours about the promotion by Quebec of a unilingual province is the foundation of your concern with respect to section 2?

Mr. Pepall: My concern about the effect of section 2 is basically that it says: "We don't really know what to do about the English and French in Canada. Let the courts decide." That is what it amounts to.

Mr. Offer: The question I have is that it could be argued that the "distinct society" clause in section 2, with respect to Quebec, could include a number of factors, a whole ream of factors basically: the French-speaking people within Quebec, the English-speaking people within Quebec, the court systems within Quebec. We have heard some of those factors today.

Now, if it is correct that they may be an element of the distinct society, and moving down in section 2, that Quebec now has an obligation to not only preserve but also to promote, and if one of those things it must do in the preservation and promotion of its distinct society character might concern one element being English-speaking persons in Quebec, does it not follow, of necessity, that the mere existence of this clause answers your concern?

Mr. Pepall: I guess there is a double-barrelled answer to that. First, I repeat my point that my concern principally is that the matter is left entirely to the courts. I think this is consistent with what Ramsay Cook was saying early on in your hearings that, if there are issues to be dealt with here, there should be specific provisions, not simply a general formula. My principal concern is that it is throwing the whole matter into the hands of the courts.

Second, in regard to your suggestion as to what the courts may make of it and the suggestion that they may make of the distinct society that it includes an English-speaking minority and so on, to the extent that one can speculate on what the courts will do, no, I do not think that is what they will do. Particularly when you have three Quebec nominees in the Supreme Court of Canada, in the last instance the courts will most likely say what this is about is the Frenchness of Quebec. When it comes down to it, we all know that the Frenchness of Quebec is what makes it distinct. That is what it is going to mean. Now, exactly how far they will carry it and what the effect of any judicial decisions may be, as I say, is a matter of speculation.

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Let me put it this way. I do not think legislators such as yourselves should sit down and pass things on the basis that you do not really know what

they mean and you are content to leave it to the courts. You really ought not to be here if you cannot make up your minds what sort of country this should be, what sort of laws we should have. It is all very well to have the courts there to second-guess you about rights and freedoms--that is a special area--but beyond that, to say, "We really do not know quite what this means but we will let it go anyway and let the courts figure it out," seems to me is abdication of responsibility.

Mr. Allen: I appreciate Mr. Pepall coming before us to essentially, as I hear you, emphasize for us, first, the propriety of the parliamentary legislative tradition as the central thrust of government in our country and in our tradition and, second, the importance of the political process as an ongoing means of resolving the disputes in the nation as distinct from either overburdening the courts with those matters or leaving it strictly and simply, as appears to be more often the case, to first ministers gathering on terrain that is not entirely described for anybody in any constitutional precedent in the nation.

Can I ask you where you see our present status in all that? I think our dilemma is that we have been brought into being as a committee, on the one hand, genuinely as a part of the Legislature and therefore part of a political process but, more immediately, as sort of an appendage to the sovereign princes whom you referred to, who have taken certain positions and then have said, "Yes, this needs legislative approval." But then the legislative approval really is only a rubber-stamping and, in effect, when Mr. Bourassa acts as quickly as he did, it totally rigidifies the whole process for the Legislature and makes it impossible to be what a legislature is supposed to be and therefore this committee to be what it ought to be in this process.

Do you see legislative committees like ours having a vital and ongoing role in this whole constitution-making business? If so, how do we get around the kind of arbitrariness that we seem to be struck with on the other side of our activity?

Mr. Pepall: Yes, I certainly see you as having a vital role. To put it more simply, I think you should take your role seriously. Of course, I am suggesting you should simply give a resounding no to what is before you, but if you are not persuaded to go the whole way as I suggest, certainly make amendments and push for them. I cannot imagine that you would all have sat here for so long, as you have already, if you did not have some idea that you could do that, however doubtful you may be as to just exactly where to go.

The simple answer is of course, yes, you should take your responsibility seriously and make your own decisions as to what is right, consider the objections that have been made and propose amendments or reject the resolution as you see fit. Dealing with the question of process and how this was arrived at, I would suggest at a minimum a very simple and I would have thought relatively innocuous change that could be made would be simply to strike out the provisions for first ministers' conferences. I do not suggest that you forbid the first ministers to meet, but strike them out.

If you take the constitutional process, as long as that provision is in there for annual first ministers' meetings to discuss the Constitution, the concern that Mr. Breaugh and others in this committee have expressed about how they got here and whether it will happen again the next time is alive and threatening. As long as in the Constitution itself the first ministers are there to discuss the Constitution on an annual basis, committees of this Legislature and so on are always going to be trailing on behind, with very little hope of having any effective say on what is done.

So the simplest thing that could be done to improve the process, to deal with that alone and not the substance of what has been decided, is to strike out the first ministers' meetings. On that score, just strike out the constitutional ones. If they want to get together and have a general talk about the state of the nation, I am not in favour of it but I think it is less threatening than a constitutional conference.

Mr. Allen: Would you agree--I suspect you would--that if we are caught in a series of single problem-solving exercises around the Constitution and this goes on and on, we as a committee on the other hand are going to be drawn into a process that could well trivialize not only the process but also the Constitution itself as every issue becomes constitutionalized?

Mr. Pepall: Yes, I think there is a serious risk of that. I respect the various organizations, for instance, that have come before you. I think if I were on the board of one of these organizations, I would perhaps say to myself, "I think we should probably go down to the select committee and say there should be something in Meech Lake for us." That is one of the unhappy effects of all this constitution-making. Everybody immediately thinks that the first way to solve your problems, if you are unhappy with your position in society, is to get something in the Constitution, and once you have it in the Constitution, then to go to the courts, not just with respect to this resolution but almost anything.

You people might as well take a long vacation. We really might as well forget about elections, because it is all going to be decided by first ministers, by the Constitution and then by the courts. I think we should do anything we can to encourage people to return to normal politics where, if they have a concern, if they think they need more services or they are being discriminated against or whatever, they come before legislatures or the Parliament and say, "Please pass a bill." You consider that in the ordinary way and if it does not work out, you amend it. That is the way to deal with all these issues. As long as we persist in this constitutional obsession, we are never going to get back to that.

Mr. Chairman: Thank you very much. I think one of the things your presentation and your comments in answer to questions has underlined is that legislative role: In a parliamentary system, albeit a federal parliamentary system, how we measure off, I suppose, the number of competing or perceived competing goods in terms of rights and powers, and that one simple process we have where people go into an election and vote. Where do we as legislators, here or in Ottawa or wherever, try to assess that balance so that a lot of the things you are talking about are perhaps more appropriately dealt with at that level?

I think in the light of a lot of the things that have been said so far, it is good that you came and good that you reminded us of some of those things, if I am right. I want to thank you again for putting forward the brief and the way you laid it out, which makes it, I think, quite straightforward to follow. As we have said on a number of occasions, we very much appreciate it that you as a private citizen have come forward. We hope that others watching or observing legislative committees will recognize that private citizens have every bit as much right to come as does any group or government or whatever. We thank you.

Mr. Pepall: Thank you very much. I appreciate being here.

The committee recessed at 12:40 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

WEDNESDAY, FEBRUARY 24, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

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Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Sterling, Norman W. (Carleton PC) for Mr. Harris

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From the Legislative Assembly of the Yukon:

McLachlan, Jim, Interim Leader of the Liberal Party; MLA for Faro

Individual Presentation:

Coyne, Deborah, Assistant Professor, Faculty of Law, University of Toronto

AFTERNOON SITTING

The committee resumed at 2:03 p.m. in room 151.

Mr. Chairman: Good afternoon. Mr. McLachlan is the interim leader of the Liberal Party in the Yukon. It is a pleasure to welcome you to Queen's Park. We thank you for coming a considerable distance. As you know, the government leader was here the other day as was another colleague, the leader of the Progressive Conservative Party. I think that has helped us greatly in understanding more clearly the concerns from the Yukon.

In addition, we had two members of the government of the Northwest Territories. It is a pleasure to have you here with us this afternoon. We have copies of your submission and if you would like to take us through it, then we will follow up with questions.

JAMES MCLACHLAN

Mr. McLachlan: Mr. Chairman, and distinguished members of the Ontario Legislature, thank you very much for this opportunity to address the committee on the concerns that the Yukon Liberal Party has on the Meech Lake accord. I must also say that you will find that my party's opinion towards the accord is very similar to the Yukon's other two political parties and, indeed, the views of the vast majority of Yukoners and northerners.

On April 30, 1987, the first ministers met at Meech Lake, Quebec, to draw up constitutional changes which would bring about Quebec's full membership in Canada's Constitution. The result was a document which we all know as the Meech Lake accord. Among other things, the accord will require the unanimous consent of the existing provinces for the admission of new provinces. This amendment would make the Yukon's chances of one day achieving provincial status almost impossible, and certainly very, very difficult. The accord also gives every province in Canada the power to put names forward for appointment to Canada's Senate and the Supreme Court of Canada. The Yukon and Northwest Territories have no similar right to put names forward under the accord. In short, the proposed constitutional changes that are referred to as the Meech Lake accord are, indeed, unfair to all northerners. Yukoners and, indeed, all northerners have become second-class citizens when it comes to our Constitution.

Residents of the Yukon and Northwest Territories fully support, I might add, the principle achieved in the accord, which was the bringing of Quebec back into the Canadian constitutional family. However, we feel that the process of constitutional negotiations leading up to the signing of the accord was very seriously flawed, in that territories were not consulted and as a result of the flawed process, the substantive provisions in the accord do not take into consideration either the rights or aspirations of those Canadians living in the Yukon and NWT. I would even go so far as to say that certain provisions in the agreement trample on our rights and make a mockery of our aspiration to one day achieve provincial status.

During the 1982 patriation of Canada's Constitution, the then Prime Minister Pierre Trudeau likened the patriation to a situation where a growing child, who had lived away from his childhood home for a good many years, was returning home one last time. To signify that this was the final break with his parents, and thus his childhood home, all the individual's remaining personal belongings were being removed. These belongings had been left for all those years in the parent's home--England--as a type of security blanket. As

long as the grown child left a few of his belongings in his childhood home, the option of one day returning to the protection of the family home was left open. The patriation of our Constitution was likened to that final return home when every belonging is taken from the closet, packed in a suitcase and taken away to a new home, never to return. The process of growing up and becoming a truly independent adult was only then complete for Canada.

If I may, I would like to borrow that descriptive analogy and apply it to what is being done here to northerners, and I hope it will help you understand the frustrations that we are feeling over the accord.

Imagine, if you will, a great and caring home--Canada--where only two of the 12 children still live at home with their parents. These two remaining children--adolescents, if you will--are just beginning to dream of where they will go and what they will do after they leave the protection of the parents' home. The two children are just beginning to imagine a life without the guidance of their parents. Late one night while the two children sleep, the parents convene a meeting with all the older children--the other 10 provinces. When the two children wake up the next morning, they find they have been locked in their rooms. When the children protest in a mature manner that they have been treated unfairly and that the parents' actions run contrary to all principles of fairness and justice, the parents simply state: "That is tough. An agreement has been reached between us and the 10 older children and we would not dare attempt to change it for fear of upsetting the older children and losing their support in the agreement." When the two children protest that the agreement was reached without their being told, silence is all that is returned to them for an answer.

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The bitter memory of how these two young adults, the two territories, were treated during this critical period in their development will scar the relationship the children have with their parents for a long time. The territories' sense of being mistreated and the bitterness which is its result will not soon be forgotten.

Let there be no doubt the children will continue to grow and develop. Of that there can be no doubt. The question is will we do it with the co-operation and support of the federal government or will we just take and do what we want and say, "To hell with maintaining a good relationship with the federal government"?

We in the Yukon Liberal Party hold the federal government responsible for the grave injustice that has been perpetrated on the north. The federal government not only failed to represent the interests of the northern territories at Meech Lake, but in fact sat by and watched while our democratic interests were trampled upon. It seems to us in the north that the federal government has forgotten that Canada is not only made up of 10 provinces, but it does also have two northern territories.

Mr. Mulroney, when first elected Prime Minister, did promise to usher in a period of consultation, co-operation and harmony when it came to federal-provincial relations. Of that we have heard many times. To a certain extent this has been achieved. It is no mean feat to bring about unanimous consent of the 10 provincial premiers for a set of constitutional changes as important and far-reaching as those contained in the accord.

The Yukon Liberal Party, although we strongly disagree with certain

provisions of the accord itself, does applaud Mr. Mulroney's achievements in this regard. But the fact remains that the north was not invited to attend the Meech Lake meeting, nor was it consulted about the constitutional changes, even though some of them directly affected the two territories.

Furthermore, the federal government has been obstructionist and has refused to co-operate with the territories since the accord was made public. Mr. Mulroney has not ushered in a period of consultation, co-operation and harmony. His government has not consulted or co-operated with the north in this matter and the result is disharmony.

Any democratic state that does consider itself a fair and just nation must ultimately be judged by how it treats its less powerful minorities. I dare say that if the Meech Lake accord is taken as an example, Canada comes out looking poorly because a small minority of Canadians, those of us who call ourselves northerners, have been done an injustice by this accord.

The accord contains three provisions that we find repulsive: the constitutional amending formula and the clauses having to do with appointments to the Senate and the Supreme Court.

The amending formula contained in the accord would, among other things, require the unanimous consent of Parliament and all 10 provincial legislatures for the creation of new provinces. This proposed formula represents a marked change from the existing formula. Enacted by the Constitution Act of 1982, this requires the consent of Parliament and seven provincial legislatures, representing 50 per cent of the population. The procedure prior to 1982, established by the Constitution Act of 1871, allowed the federal Parliament, acting alone, to create new provinces out of federal territories.

The Yukon Liberal Party believes that the unanimity requirement is so rigid and unworkable that it will make it virtually impossible for the territories to become provinces some day.

Having said this, I would also like to admit that I do understand totally why the existing provinces demanded a veto over the creation of new provinces. In all fairness, existing provinces are fully justified in demanding unanimity over certain matters involving a territorial transition to full provincial status.

It is a matter of fact that the creation of new provinces will affect the numerical operation of the existing constitutional amending formula. As well, the creation of new provinces will affect the fiscal relations among governments. In these exclusive matters, existing provinces are fully justified in demanding unanimous consent before a new province is created.

However, there is an important distinction to be drawn between those aspects of provincehood that will impact upon existing provinces and those that will not. With the exception of those just mentioned, most aspects of provincehood will in no way affect the other provinces. The legislative and executive powers a new province is to exercise, for example, should be of no concern to the other 10 provinces. Why should the other 10 get involved in the game? In relation to most matters of attaining provincehood, existing provinces have no legitimate claim to a veto.

In its report on the Meech Lake accord, the special joint committee of the House of Commons and the Senate recognized the important distinction I have just alluded to. The report stated that the principle of the equality of

all provinces upon which the unanimity requirement in the Meech Lake accord is based "...can be carried too far if it imposes artificial and unnecessary constraints on the natural development of an important part of the country and disadvantages the people who live there."

It is the Yukon Liberal Party's contention that the unanimity clause in the Meech Lake accord does precisely this. The constitutional amending formula contained in the accord places an unnecessary and overpowering constraint on the political development of the territory.

The second and third provisions of the accord, which Yukoners find most unacceptable, are those which have to do with appointments to the Senate and the Supreme Court of this country. The accord requires that future appointments to the Senate and Supreme Court of Canada be made by the federal government from lists of candidates proposed by the provinces. In the case of the territorial Senate vacancies, it appears that these may still be filled by the Prime Minister with little or no consultation with the territory involved. There is no corresponding requirement that the Prime Minister choose from a list of candidates provided by the territory.

In the case of future appointments to the Supreme Court of Canada, the Prime Minister may only make an appointment to the court from lists provided by the provinces. Although qualified northerners could in theory be proposed by a southern province, it is extremely unlikely that this would happen. Provinces are very unlikely to nominate someone from outside their borders. That is a fact of life. It just does not happen.

For all intents and purposes, the Meech Lake accord is then barring Yukoners from eventually becoming a Supreme Court justice. No matter how hard-working, intelligent or ambitious you may be, if you are born on the banks of the Yukon River, you will never dream of one day, at least from our legal fraternity, becoming a Supreme Court justice.

The Yukon Liberal Party believes that the accord's provisions concerning future appointments to the court and Senate are discriminatory and unjust. Northerners believe that the territorial governments should receive equal treatment and that their duly elected governments should have the authority to recommend qualified northerners for appointment to Canada's Supreme Court and Senate. We just got the Senate seat in 1975. It has only been a very short term for us and we definitely do not want to lose it.

Mr. Chairman, by now you and your fellow committee members must be all thinking to yourselves that, yes, the Yukon has a legitimate grievance over the Meech Lake accord, that they have been done, in some cases, an injustice. We all know that the Prime Minister and the 10 provincial premiers have said they will entertain no attempts to change the document for fear of unravelling it. As a fellow legislator, I know the pressure you are under to come forward with a report that will rock no boats. I understand this position which you find yourselves in.

But the question I must face is this: Is the Yukon's battle against the unjust provisions in the Meech Lake accord over? I must tell you that I believe it is not over. There are at least three areas of hope still left for Yukoners. The first is a Senate task force on the Meech Lake constitutional accord and on the Yukon and Northwest Territories. The second is the Yukon court case against the accord which has recently been appealed to the Supreme Court of Canada. Finally, the third avenue of hope is this committee and what you will ask the Ontario Legislature to do with the accord.

The Yukon's first avenue of hope, the Senate task force, which travelled throughout the north and heard northerners' views on the accord, will be submitting its final report and recommendations next week. Yukoners look forward to it. All indications are that the Senate will go so far as to recommend changes to the accord, changes that will alleviate northerners' concerns over the accord, changes that will restore northerners' rights and sense of justice, changes that will restore our faith in the political process of this country.

The Senate came north to hear our voice. They were moved by it, by its anger, by its sense of alienation, but mostly they were moved by the simple fact that if our collective dream of one day achieving provincehood is snuffed out, and the Meech Lake accord as it is presently written will surely do this--Yukoners will lose all sense of political meaning in life. All indications are that the Senate of Canada has decided to take the bold step necessary to restore that lost sense of meaning.

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Our second area of hope lies with the Meech Lake court case. As I have pointed out, the court case has been appealed to the country's highest court. Ladies and gentlemen, I must tell you in all earnestness that I feel that the court case is going to be the bomb that does blow Meech Lake out of the political waters. The following are my reasons, and I would like to point out to you a section of the Constitution Act of 1982, subsection 37.1(3), stating: "The Prime Minister of Canada shall invite elected representatives"--and that is a very firm "shall," not "may"--"of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories."

This is a clear-cut statement. I could not imagine it being any clearer. It is in the 1982 Constitution Act, passed by the Parliament of Canada. It does create a commitment on the Prime Minister not to do anything without consulting the Yukon and NWT, and I do not believe there is any evidence at all that there was any consultation of the Yukon or the Northwest Territories.

I think that when that section gets before the Supreme Court, it may do the same damage to the Meech Lake accord that the court case in 1982 did to the original Constitution Act of 1982: In other words, they went back to the drawing board and renegotiated. I hope that is what that section will do when it reaches the Supreme Court of Canada.

Mr. Chairman, this brings me to the Yukon's third avenue of hope in our struggle to restore a sense of justice in the north. That avenue is this committee and the Ontario Legislature. I have stated earlier that I understand your position and I understand that you cannot recommend radical changes to the accord. But I hope, and I sincerely hope, that you will recommend changes to those provisions of the accord which do an injustice to the north, as the Senate is expected to do next week. However, I will understand if you find it impossible to make such a sweeping recommendation.

On behalf of my party, on behalf of all Yukoners, as a Liberal I ask that this committee recognize that northerners' rights have been infringed upon by the accord. I hope that a clear and concise statement of that nature will be present in your final report to the Ontario Legislature.

In addition, and more importantly, I would ask that you recommend that the Ontario Legislature postpone its ratification of the accord until after the Supreme Court of Canada has had the opportunity to decide on the Yukon's court case. It is not very often that a politician can say that he is on the side of right and that time will vindicate his position. This is one of those rare instances. I believe Yukoners and their politicians are on the side of what is right and just. What we need from you is time.

We ask you to postpone your ratification of the accord so that northerners may have the time to have their voice heard in the Supreme Court of Canada and across this country. I have no doubt that when that voice is heard, Canadians from coast to coast will be motivated to restore the political rights which the Meech Lake accord has taken away from northerners.

Thank you for your time.

Mr. Chairman: Thank you very much, Mr. McLachlan, for the statement and for your suggestions. I think now with this statement, coupled with the two that we have heard from the Yukon, if we fail to identify the problems as seen from the Yukon, it is not because there was not a concerted effort by Yukoners to make it clear to us. I think your submission today does serve to underline a strong community of interest amongst all three of the parties, but with some interesting nuances, perhaps, in terms of the route we might go.

With that, I will begin questioning with Mr. Offer.

Mr. Offer: I would like to echo the words of the chairman in thanking you for your presentation today.

What I would like to do is pose some questions with respect to your concerns over the amending formula. You have spoken about the amending formula and you have used the words "rigid" and "unworkable." Please forgive me, but I do not see what you are proposing. I mean, you say that the current provision with respect to the unanimity formula is rigid and unworkable. You then go on to say that you understand and admit two areas where existing provinces have some concerns in dealing with the creation of new provinces. But there is that third point which I am posing to you and saying that I do not see your suggestion with respect to that.

Mr. McLachlan: All right, I will try to alleviate some of your concerns. No one is really proposing that the Yukon is ready for provincehood tomorrow, next week or the following month, or perhaps the following year, either. We simply want a chance to have the doors left open some day when the resource revenues are sufficient to maintain us and we perhaps do not need such a large transfer payment from Ottawa, which is probably in the neighbourhood of \$167 million now. It is not a large amount for a province like this; it certainly is for us.

We understand that if you were to have the province of the Yukon and the province of the Northwest Territories in the future, at least as far as the present financial structural arrangements between Ottawa and the territories are, and the other provinces, it would upset the applecart somewhat in that the money that would have to come from the central warehouse would be substantial on a per capita basis. In that regard, we can understand why the provinces are concerned and upset. It would be seen to be taking more than perhaps would be designated as our fair share.

I believe, at least we believe in the party, that the entire process of funding would have to go back for renegotiation when you consider the other two eventually becoming provinces. Myself, I represent a very large mining district at Faro in the Yukon, the largest perhaps, depending on whether you are from Timmins, the second-largest lead-zinc open pit mining area in the territory, in Canada.

Yukon receives no resource revenue sharing whatsoever from that. Mineral royalties all go to Ottawa; nothing stays in the territory. When you have lived and worked there as long as I have, which is now almost 20 years, sometimes that rubs home a little bit the wrong way.

On the amending formula, the seven out of 10 was rigid as it was. The present structure makes it harder. There was a time when this province was not a province, and nobody I can remember was standing in the way or putting special conditions on Ontario's becoming a province.

Similarly, when the provinces of Alberta and Saskatchewan were formed in 1905, they were carved out of what was then the Northwest Territories, with no special conditions or roadblocks in the way. I guess, Mr. Offer, I am saying that we see your concerns to some extent, but when it comes to establishing an amending formula, we believe that you should have jurisdiction or have something to say in two areas only, the financial and the amending formula.

When it comes to things which we think are ridiculous, like the Supreme Court appointments or the Senate, we do not see the federal position that they should be submitted only from a list proposed by the 10 premiers, which may or may not be the closest province to us. It may be Mr. Vander Zalm's list. It may be Don Getty's list. But why? It is entirely unnecessary to do it that way, and we feel bitterly abused by those provisions of the accord.

Mr. Offer: In supplementary, I see what you are saying with respect to where provinces generally have some concern or some interest with respect to the creation of a province. Putting that fiscal issue aside, can you tell me what your proposal is with respect to the creation of new provinces. What would the formula be? Would it be the 7-50? Would it be at the behest of the federal government? I am just not certain as to what your position is outside of the issue of fiscal concern.

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Mr. McLachlan: I am proposing, Mr. Offer, that the 1982 Constitution Act be followed the way it was laid out and passed by the parliaments of Canada: that the Yukon and Northwest Territories be consulted on the process and that we be allowed some input into the mechanism that is used to develop that.

I do not know at this point, in these five minutes, what it should be, and I do not know the precise formula that it should follow. All I am saying is that we want a chance to be consulted, we want a chance to be heard and we want representation at that table. What happened in Meech Lake in April and June is reminiscent of a King Arthur and the knights of the Round Table syndrome: "Does everybody agree? Yes? No?" Behind closed doors. We do not like government by that process, where 11 people can shape the direction of this country and the way it is going to carry on.

I have indicated, and you have heard it from the other parties in the territory, that we just do not think that is right, we just do not think that is the proper way to do it and we got a raw deal out of it.

Mr. Offer: Do not misunderstand me. I am just trying to find out exactly what the position is outside of that fiscal concern with respect to the creation of provinces.

To carry on, if one accepted that, we go forward and there is some formula with respect to the creation of a province which does not include the fiscal impact on other provinces. You still need unanimity for that.

What if there is not that unanimity? The question I have is, and I am sure you have probably thought of this, what type of structure or what type of body do you have if the fiscal considerations have been left out of the creation of a province? How do you draw budgets? How do you get into cost-sharing programs? How do you, in truth, in reality, in practice, carry on as a province without that concern being met?

Mr. McLachlan: Certainly, Mr. Offer, I take your point well. You can have all the structured powers in the world you believe you have, but without some dollars to make you go along, it just does not work.

Let me refer you to the situation--perhaps 1949 is the most recent that I can remember--when Newfoundland entered Confederation. It has been known before that provinces have entered Confederation in this country with special conditions. There is no doubt that, with the 25,000 people we have in the territory and the 60,000 to 70,000 the Northwest Territories have, it is going to have to be some sort of special condition. Again, it is going to have to go down to the negotiating table.

Yes, no territory becoming a province would want to do so. The minute you became a province and raised the flag, you would sink because you had no money to go along with it. We just firmly believe it is going to be a negotiation process. We would like that chance to negotiate, and it did not happen.

Mr. Offer: Thank you.

Mr. Breaugh: I have a couple of quick questions, since we have had a number of delegations from the north who have been kind enough to come and share their concerns with us. You indicate in your presentation that you anticipate that the Senate committee will report within a week or so. Is that fairly solid?

Mr. McLachlan: Yes. I have a Vancouver Sun article which I can leave with the clerk of the committee for photocopy and presentation. I believe the date is March 2. Somewhere during your hearings, I believe in your meeting next week, the report of that committee will be out, barring any interruptions with translation into French and English. It may be something, I hope, that will give some weighty consideration to this committee when that--

Mr. Breaugh: At any rate, it is obvious that we will have the benefit of whatever they report.

Could you give us a little update on the status of your court case? Do you have any indication of when that might be heard?

Mr. McLachlan: All right. The decision was made, as Mr. Penikett announced to you last week, to make the go-ahead. I believe it is a concerted effort between the Northwest Territories and the Yukon, pooling financial and legal resources. The prepreparation of that paperwork that was to accompany

the submissions and the reasons is now in production, is now in the process of being drafted. I believe it is scheduled to go some time next month to the Supreme Court.

What I am completely unaware of, of course, is the waiting list. I am not sure what it is ahead of it; there always seems to be lots, and I am not sure what the process is. I believe it is as much as 180 days for them even to consider whether they will hear. But, considering the expediency of the situation and the impact that this is having on the constitutional development of the country, I believe, at least as far as our lawyers are concerned, it is being drawn up with all possible haste, and I can only hope the same amount of haste is used, Mr. Breaugh, in Ottawa when it is under consideration.

Mr. Breaugh: Basically what I am trying to get a handle on is that the one thing this committee has to assist us a little bit is that, first, we have the value of some hindsight in the sense that we did not go into hearings immediately after the accord was struck, and so we are able to hear, for example, briefs from citizens' groups who have had now almost a year to get a position paper together, examine the accord, look at the ramifications, seek legal advice and to do a number of things, for example, that the joint committee was rather precluded from doing by nature of the fact that its hearings happened very early on.

The second advantage we have, I think it is true to say, is that we are not under any real pressure to report and finalize early. We do have an opportunity to deliberate at some length, and the ratification vote is not required; there is no immediacy to that, either. So we may be able to do something to accommodate some of your concerns.

I do not know. I guess in this instance it all depends on how the Supreme Court decides to deal with the case you have. It would be nice if this could be finalized within the given date, all the court cases heard and all the recommendations taken, but I do not know whether that is possible. I would rather hope it would be.

But you should know that at least I do not feel that the committee is under the gun to report next week or the following week. I mean, there may be interim reports to the assembly and things of that nature, but there does not seem to be any urgency to finalize a ratification vote, as some other provinces have felt the need to do. Ontario at least has taken the position that we want a committee to go through our normal committee process, frankly, and that is to have a series of public hearings and consider the accord as it is, almost as we would go through a major piece of legislation on a clause-by-clause basis. We will do that. I would think that the committee would want to try to accommodate anybody in terms of waiting until a Senate committee reports; or if it is possible to wait until your court case is heard, I think we would like to do that and we would appreciate in the foreseeable future, as you get more information on when your case might be heard, if you could in some way make us aware of that. That would do it.

Let me just give you one final question, too. As I go over the concerns you have voiced in here, I do not sense that there is a lot of urgency. I mean, you are not really worried that you are going to have a Senate vacancy filled next year. As I recall in previous testimony, your appointment to the Senate was a person who is rather youthful and you are not anticipating that he will have to resign.

Is there any other kind of urgency in the next six months or year, for example? I am trying to work out a little bit of a time frame here that we might consider.

Mr. McLachlan: Certainly the Senate appointment, as I said, was made in 1970, and I believe the individual has not yet reached the age of 60, so that is true; there is no urgency there. Certainly we are not, as I have stated, about to become a province next week, next month or next year.

What it hinges upon--frankly, I agree with you--is the progress being made in the court case. Certainly as I understand it, this Legislature has three years from June 2, 1987, of which we have used up some eight months now. I share your views entirely in that I feel that the three provinces I can remember--Quebec, Saskatchewan and Alberta--that have passed the accord have done so on fairly short shrift. In the case of Alberta, I believe, it had a total of two weeks' debate, a total of two weeks, period, in a fall sitting in which the Meech Lake accord was passed.

In retrospect I feel that those three--Quebec perhaps being the exception because it stood to benefit--did not have the advantage of listening to some of the arguments we have and at least taking them back for another thought. I am sorry that has happened. It is a fact of life, perhaps, and we applaud the work that is being done by the Ontario Legislature. Mr. Breaugh, there are no pressing time constraints except for our preparation of the documentation for the court case.

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Mr. Breaugh: From our point of view, to be as fair as I can with you, we are concerned that our members here will want to have a substantive debate on the matter, so we have to give them reasonable notice and provide them with information. We want to accommodate as many individuals, groups, territories and provinces as we can in our consideration, so we are not anxious that these hearings, for example, be speeded up. We are not making decisions on when the committee would report or whether there would be one report or several, but we are interested in time frames and when things might happen.

Just to conclude a little bit, I think everybody in the room gives you the basic point that it was impolite, if not illegal, for the 11 people to sit in a room and exclude representatives from the territories and the Yukon. We have always had some difficulty in sorting out the role of the Yukon and the territories, and accommodations were made; I guess that is the best way to put it.

What many of us are having some difficulty with is, are we dealing with a practical problem that will not emerge for 20 years or are we dealing with an immediate problem that may not emerge for two or three years, but that is in the foreseeable future? How far away do you think the territories and the Yukon really are from some change in their current status? I am not saying you would have to opt for provincial status or whatever.

Mr. McLachlan: There is a process of devolution of federal responsibilities to the territory on a continual, ongoing basis. In April 1987, the Northwest Territories took over responsibility for its forestry. We do not have that yet. We do not have the responsibility for mining; it is all federal.

There is a move by the federal government to reduce its presence in the territory. On those matters in which government is involved, it is expected it will transfer powers literally from year to year. In fact, the process has reached the point now where the government of Yukon has created an office of devolution, a devolution commissioner who does nothing but oversee the transfer of these powers on an ongoing basis. We now have the full responsibility for generation of our own power, as you have with Ontario Hydro. As to provincehood, it could easily be 20 years, no question, with more and more gradual responsibility yearly from federal governments.

Mr. Breaugh: I think our job would be made so much easier if we were not looking at an agreement which substantially changes the rules of the game and if we were looking at keeping in place the previous formula for adding provinces or something like that, so that you could say we have not changed that rule, that ??there are other circumstances we have to deal with. The catch-22 we are caught in is that acceptance of the accord in its whole form precludes some things we are used to doing, so the rules change a lot.

I suppose it could be argued that if we can accommodate a number of concerns by the time this accord has to be ratified, in other words, if we can resolve outstanding problems, maybe we could proceed to ratify. The real difficulty is, what does one do with two territories that will not be ready for provincial status for a fairly lengthy period of time? I think that is a perplexing problem for us because the indications we have had before this committee is that no one knows when that application might come forward or whether there would be some status sought other than provincial status. We are a little hung up on that problem.

Mr. McLachlan: What do you do? I guess I would answer you by saying that you leave the door open. Why close it? Why deny that opportunity of some day becoming a province? It was not so done in 1905 for Saskatchewan and Alberta. Why do it now for the territories? What is the reason for that? Why should we not have a fair chance the same as all the other 10 have had? They were all small too. There was a time when Alberta did not have a lot of resource revenue either, which is quite different from the situation you see now.

Mr. Chairman: Mrs. Fawcett.

Mrs. Fawcett: Thank you very much. I had the good fortune to be in the Yukon during the summer and, addressing Meech Lake, it would come up as an offhand comment: "Well, not to fear. We will become the 51st state."

Mr. Chairman: I am sorry. Could you speak a little louder.

Mrs. Fawcett: This offhand comment, "Well, we will become the 51st state," I hope it was offhand. Could I have your feelings on that. I posed that to Mr. Penikett when he was here. He certainly alluded that definitely the feelings were there. Are you of that same opinion?

Mr. McLachlan: I know Mr. Penikett has referred to that. I have heard that. I was somewhat disconcerted with it because I am sure there are a number of Yukoners who have no more intention of becoming subject to military conscription than they have of flying to the moon. I believe that is Mr. Penikett's--I hope it is an offhand statement. In fact, it may be used in this game as a bargaining chip--

Mrs. Fawcett: That is not very good either.

Mr. McLachlan: --just simply saying, "If you do not, we will do this."

I can remember the arguments in talking about free trade between Yukon and Alaska, because we are much closer than the state of Washington, for example. The analogy being used was that at one time the state of Hawaii was trading with the United States on a sugar pact. Eventually it got absorbed and became another state when the advantages of becoming a state became more apparent to it. I cannot see that same type of advantage being done for Yukon whatsoever.

Mrs. Fawcett: It worried me slightly when you were talking about the federal powers being gradually turned over to you. I would not want to see that pursued too far with Alaska right there. Mr. Penikett alluded to the fact that some of the tourism promotion and that kind of thing is done jointly. Is there much of this that goes on that you do jointly?

Mr. McLachlan: It is done jointly with Alaska simply because the proximity of the port of Skagway allows us to bring large tour ships in, and then we are only two hours from the capital city of Whitehorse by all-weather, all-year-round road. That probably is the largest part that makes that. Then passage is up the inside channel from Vancouver, Seattle to Alaska and then to the Yukon where we are piggybacking, to some extent, on some of their tourism money. It has worked to our success, but as far as becoming another state is concerned, no. Mr. Penikett used it. I have only heard it briefly. It is not one of my aspirations.

Mrs. Fawcett: Good. Thank you. Glad to hear that.

Mr. Chairman: The position Mr. Phelps put forward the other day included what I think was quite similar to you, the clause that related to financial arrangements in terms of where other provinces had interests. That seemed to be a common theme in moving forward. Were the views you presented to us today also presented to the Senate committee when it was in the Yukon? Did your party make a presentation?

Mr. McLachlan: Yes, a lot of this--certainly the part about asking this committee to wait until the court case was not presented, because it is addressed specifically to this committee. When the Senate committee met in Whitehorse on October 24 and 25, of course the decision was not made at that point to go to Meech Lake. In fact we only got, I believe two days before Christmas, the decision of the British Columbia Court of Appeal. December 23: 60 days from then was yesterday in order to make the appeal to the Supreme Court. Mr. Penikett had finalized that decision by last week. But yes, most of the ideas in here except for this one about waiting.

Mr. Chairman: The other thing I would like to ask you is with respect to native questions and the issue in the Yukon. To what extent do you think some of the things we see in the Meech Lake accord relate to concerns the federal government has, and perhaps some of the provinces have, as to what may eventually develop in the Yukon and the territories in terms of the land settlements and/or relative power relationships there. I guess part of our problem at times is that as we listen to what seems to be a very plausible and sensible argument about where you are headed constitutionally and about wanting to leave the door open, we are searching for the reasons why it ended up the way it ended up. In your view, are there perhaps some hidden agendas or other issues or problems which are not being discussed directly, but are reflected in what has emerged through the Meech Lake-Langevin agreement?

1450

Mr. McLachlan: The Meech Lake accord certainly is going to throw some additional monkey wrenches or spanners into the whole process of trying to negotiate a constitutional land claims settlement in the Yukon, which has been going on since Mr. Chrétien was Minister of Indian Affairs and Northern Development in 1974. In 1988, it is still going on and is still trying to be settled.

The unanimity clause is a very serious one when it comes to land claims negotiations. It leaves open the door, at least leaves open the situation with question marks, as to what that effect is going to be when it comes to settlement of the land claims because there are three parties to that agreement: the Yukon, the CYI or Council for Yukon Indians and the federal government of Canada. We feel it is something that is going to make just one more difficult step in the game of getting a land claims settlement.

Mr. Chairman: What is your view of where we are at in terms of a land claims settlement in the Yukon?

Mr. McLachlan: I would like to think in the next 18 months, but that provision has been put forward before, too, and something inevitably comes up to throw a monkey wrench into it. I know it is certainly big on the present government's agenda. Talks are going on again. If an overall settlement cannot be reached immediately by this, the process is to do it band by band.

Mr. Chairman: Yes, 12.

Mr. McLachlan: Yes, 12 separate bands.

Mr. Chairman: If that is an issue that is somehow skirting around behind all of this--it is not being openly put to you or to the other leaders in the Yukon, "We had to do some of these things because we have concerns about other issues there that do not necessarily fit in here."

Mr. McLachlan: The federal government has never said directly, "We did this because of some of the other issues, i.e., land claims." It is a difficult process as it is. As I said, people feel it could make it worse.

Mr. Chairman: Mr. McLachlan, I want to thank you very much for coming and joining us today. As I said earlier, as we put your testimony together with that of your colleagues, I think we will have received a good indication of not only the concerns from the Yukon but also the feeling that comes from that in terms of how the whole process works. We will certainly look at that very carefully. We thank you very much for joining us today.

Our next witness is Peter ??Meekison from the University of Alberta. Mr. ??Meekison is delayed, so I will suggest that we take a short recess. As soon as he arrives, we will begin.

The committee recessed at 2:54 p.m.

1518

Mr. Chairman: Please come to the table. We thank you for coming in. We had a lost witness so we are happy you are here early and we can get started.

Ms. Coyne: It is either that or watch the Olympics.

Mr. Chairman: That is right. What I will do is simply bring the microphone over to you and if you would like to make your opening remarks, we will follow up with a period of questions.

DEBORAH COYNE

Ms. Coyne: Thank you very much. I will start out with an opening statement and then obviously I will be open to all questions for you to clarify something or ask me anything you might wish.

I want to start out with a question. What is the debate over the Meech Lake accord really all about? It is about a few things. It is about challenge, the challenge of articulating a vision of Canada as a bilingual and multicultural nation, the challenge of accommodating our diversity and building a fairer, more compassionate society. It is also about courage and commitment, the courage and commitment to pursue the national interest and an idea of Canada that is more than simply the sum of its parts. Above all, it is about leadership. It is about principled leaders who have the courage and commitment to meet the challenge of nation-building.

The trouble with Meech Lake, like the bilateral trade deal, is that it reflects a void of national leadership. Sure, it is much easier to make a deal just by giving everything away to all the provinces. Sure, it is much easier to appeal to everyone's selfish me-first instincts by concluding a deeply flawed trade deal on the basis that it is going to add a couple of percentage points to our gross national product and perhaps a few more jobs. That is not leadership.

Leadership can be tough. It means rising above the pressures of single-interest groups and pursuing the broader national interest. It means making tough choices and having the courage to stick to your convictions and principles. Most important, leadership involves appealing to and drawing out of us our more noble instincts, like our commitment to sharing and to compassion for the less fortunate and to greater social justice.

Clearly, our national leaders have not measured up to this standard, particularly when it comes to changing our basic law. Yet the midwives of the Meech Lake accord continue to insist that the accord is the ultimate expression of Mr. Mulroney's much-wanted national reconciliation. They say that by obtaining the Quebec government's signature on the Constitution, the Meech Lake accord will strengthen national unity. In my view, nothing could be further from the truth. On the contrary, the Meech Lake accord demonstrates perfectly why Mr. Mulroney's national reconciliation means national disintegration.

I want to show how the accord will have a profoundly decentralizing and divisive impact on our federal system. I want to show how it is going to lead to greater disharmony between the federal and provincial governments, and I want to show how it will put in question our future ability to function as a single sovereign nation.

First, I will make a few comments about the overall impact of the accord. The accord will fundamentally change the nature of our country and our society in a way that betrays the Canadian tradition of seeking greater social justice and a fairer, more compassionate society. The accord betrays the Canadian tradition of respecting and promoting basic rights and freedoms and

it undermines the Charter of Rights and Freedoms. The accord will gravely weaken the ability of our national government to reduce inequalities of income and opportunities among Canadians and its ability to protect the weaker regions of the country.

It will result in an irreversible shift of political dynamism on matters of national importance from Ottawa to the provinces and will lead to increasing disharmony and disunity. Canada is already one of the most decentralized federations in the world. The Meech Lake accord has the potential to make us ungovernable. Yet all this is occurring at a time when we have more need than ever for strong national leadership to meet the unprecedented challenges that we face today.

These include adapting to the global technological revolution, improving productivity and competitiveness, eliminating poverty and unemployment and reducing disparities in income and wealth among Canadians. But, under the influence of the Meech Lake accord, critical policies on national and international issues will be reduced to the lowest common denominator of rival provincial interests. The dynamic competitive element of our federal system that has made us a progressive nation and a diverse yet compassionate society will be irreversibly extinguished.

Our sense of national community and national identity will gradually be eroded, together with our ability to survive as a sovereign nation. This process will simply be accelerated as the north-south links with the United States are strengthened through an equally flawed bilateral trade deal.

The noted sociologist Raymond Breton recently made a critical and sobering observation about Canada's future as a nation. He points out how, on the one hand, the Meech Lake accord emphasizes the provincial level of social organization and provincial institutions, then, on the other hand, the bilateral trade agreement with the United States promotes and bolsters institutional development at the continental level. The problem is, however, that the national society is being neglected in the process. Canada, as a distinct level of social organization, will be progressively eroded by emphasizing developments in the other two directions; that is, provincial and continental.

We seem to be taking it for granted that there is no need to preserve and promote Canada. This is a dangerous illusion. The inevitable result of the Meech Lake accord is going to be a blurring of our international personality as provincial governments play more prominent roles both in national policy and in international affairs. The recent Sommet de la francophonie in Quebec City in September 1987 demonstrated all too clearly the dangers that this poses to our internationalist tradition and the respect that we as a nation have traditionally been able to command abroad. This applies to all our key areas of international activism, whether it is peace and security matters, human rights, global environmental protection or international development.

Confusion is now emerging over who speaks for Canada. One day, Secretary of State for External Affairs Joe Clark announced that Canada would write off some of the debts of some of the francophone African countries. The next day, the Premier of Quebec, Robert Bourassa, argued that the repayment of many Third World debts should be linked to their export receipts.

Many people both within and outside Canada would say that both of these are highly valuable suggestions. But now who speaks for Canada: Alphonse or Gaston, Joe Clark or Robert Bourassa? If you want to influence Canadian

foreign policy, where should you go: the provincial government or Ottawa? Clearly this is not an acceptable way to develop and to implement Canadian foreign policy.

More generally, the significant weakening of the national government and the undermining of the charter under the Meech Lake accord will make it impossible for us to pull together as a people to meet the tough domestic and international challenges that lie ahead.

We will be unable, for example, to implement an effective national telecommunications policy to assist us in the transition to the global electronic society. If you think that Flora MacDonald has problems now with trying to produce a long-awaited national telecommunications policy, you ain't seen nothing yet.

We are also going to be unable to assert a credible national presence in our financial markets, such as through the long overdue creation of a national securities commission. Yet, in today's world of instant globalized capital flows, this is an important element of sovereignty, and we have already seen how this is becoming increasingly necessary in the wake of the October stock market crash. But again, all those proponents of it, like Andrew Kniewasser and Brian Steck and all the people in the financial community who are now speaking out in favour of it, have got a long time to wait, if not eternity, if the Meech Lake accord goes through.

Another example: We will be unable to pull together to establish firm national environmental protection policies and standards to follow through on the path-breaking Brundtland report, and that is the international report that set out a new course for our sustainable economic development.

Finally, we will be unable to undertake the critical social policy reforms that are required not only to promote greater social justice, but also to improve our productivity and competitiveness. These include the integration of our employment and social assistance policies, a meaningful child care and parental leave program--and I will discuss that further a little later--a comprehensive disability insurance scheme, a national science and technology strategy--a real one, that is--and new education and training strategies.

These all involve areas of overlapping federal and provincial jurisdiction and necessitate the effective co-ordination of federal and provincial policies. But most important, firm national leadership is essential to get us to first base if we really believe that all Canadians should be the beneficiaries of progressive policy initiatives.

I want to note here that I am not saying the federal government is always going to be the good guy or the initiator of progressive policies. In fact, it was not in medicare and in fact I think we have a terrible federal government right now. But what I want to say is that in a province, such as a good province, as some might say, in Ontario, where some progressive social policies may be put forward--and I expect they will be in the wake of the Social Assistance Review Committee report--then at some point we want a federal government to be able to sit back and say, "Hey, this is working and we think that all Canadians should benefit from this, and it is something that will increase mobility and enable Canadians to move to where the jobs are."

Unfortunately, the danger is now all too real that, with the Meech Lake accord embedded in our basic law, it will be impossible to bring the necessary degree of national leadership to bear and there will be nothing left to prevent us from slowly sinking below the 49th parallel.

Fundamentally what is at issue here is the future of Canada as a single, sovereign, bilingual and multicultural nation, as a diverse yet compassionate society. At issue is our ability to hang together as a people and to meet the tough challenges that lie ahead. Yet our politicians seem curiously blinkered, unable to rise above narrow partisan interests to articulate how seriously the national interest is at stake in the process of constitutional reform.

It is astounding, for example, to listen to our provincial politicians here in Ontario castigating the bilateral trade deal for its catastrophic impact on Canadian sovereignty and its unacceptable constraints on both the federal and provincial governments. The irony is that when you hear the provincial Attorney General, Ian Scott, arguing eloquently--and here I quote--"The free trade debate is about people. It is about to whom, if anyone, they may look for the social and economic policy they require," you could just as easily substitute "Meech Lake" for "free trade." Indeed, I would argue that the catastrophic consequences of Meech Lake are even more serious than those of free trade, since once the accord is entrenched in our Constitution with the rigid unanimity amending formula, its destructive impact will be impossible to reverse.

1530

It is important to make a few general comments about constitutions and constitutional reform and perhaps try to figure out why our politicians react so differently to constitutional reform compared to the free trade debate. First, constitutional reform must not be associated with esoteric legal debates about which subparagraph of what subclause does or does not derogate from some government's power. Equally, constitutional reform is not just an affair of governments and first ministers. It is not about power plays among all self-interested politicians sitting around a bargaining table in isolated hothouse conditions.

Constitutions are about you and me. They are about individual Canadians. Our Constitution guides our future evolution as a progressive, dynamic nation. It is a document that is designed to endure for long periods of time. It articulates the fundamental values that are common to all of us and that draw us together, and it expresses our commitment to a fairer, more compassionate society.

Many of these values are now expressly set out in our Charter of Rights and Freedoms and include provisions for mobility rights, broad guarantees of equality, minority language and education rights, and our commitment to multiculturalism. In addition, the Constitution now entrenches the principle of equalization and the affirmative commitment of all governments to promote equal opportunities for the wellbeing of all Canadians.

Clearly, any constitutional change inevitably affects these basic rights and freedoms in addition to altering the nature of the federal system. This includes changing the balance of power between the federal and provincial governments and shifting the balance between the judiciary and the legislative executive branches of the government. So individual Canadians must be meaningfully involved in the process of constitutional reform and not frozen out as we were at Meech Lake.

I am going to go on and outline how the Meech Lake accord is at odds with the vision of Canada and what it means to be Canadian that is held by a vast majority of Canadians. I am going to show why the accord will lead to greater disharmony and national disintegration rather than strengthen national

unity. The five areas that I will focus on are the spending power restrictions, the new amendment procedures, the "distinct society" clause, the entrenched first ministers' conferences and the appointments to the Senate and the Supreme Court of Canada.

First is the spending power. The spending power provisions in the accord will seriously weaken the federal government's ability to implement national social and economic programs. This will seriously attenuate our sense of national community and will lead to increasing inequalities of opportunities and standards of living across the country.

We tend to forget how important national social programs are in sustaining and strengthening our sense of national community. They contribute to that intangible element of what it means to be Canadian. This occurs through the establishment of minimum national standards and the assurance that we can go anywhere in Canada and get the same or similar levels of public service, like medicare. You just have to remember the national debate over the Canada Health Act in 1983-84 and the strong resistance across Canada to any erosion of the medicare program through extra billing and through user fees.

The same sort of debate is occurring over child care, environmental protection, especially in the wake of the Brundtland report, a national education strategy and a national science and technology strategy. Unfortunately, the excessive ambiguity of the spending power provisions in the accord and the excessive ease with which the provinces can opt out of any proposed national program with compensation, will mean that we are going to end up with a patchwork of programs across the country with the federal government relegated to playing a sterile role of cash-register politics and we will have transferred inappropriate powers to an ill-equipped judiciary to determine such key political issues as whether or not a province has complied with the national objectives and so forth.

When this is then combined with the ability of any province to opt out, with financial compensation again, of all future constitutional amendments that transfer power to the federal government, such as those that we had in the past dealing with unemployment insurance and pensions, we are going to wind up with little sense of national purpose in an increasingly balkanized Canada.

It will now be far too easy for a province to opt out of future adjustments to the division of powers that may be required in critical areas of public policy, notably in the areas of environmental protection, telecommunications, science and technology and the integration of our employment and social assistance policies.

Furthermore, this will seriously impair the mobility of Canadians that is so critical in today's fast-paced, technology-driven society. Take, for example, child care. The proposed national child care program illustrates purposely the dangers posed by the Meech Lake accord to our ability to undertake the necessary social and economic reforms.

Despite last-minute denials by the Minister of National Health and Welfare that the program is governed by the Meech Lake accord, it is clear that it was negotiated in the spirit of Meech Lake, as consistently asserted by the government and participants in the post-Meech Lake phase of negotiations. Thus, in an attempt to avoid the possibility of any province opting out of the program with compensation, as would be permitted under the Meech Lake accord, the government has produced the lowest common denominator package that is devoid of national standards.

We have ended up with a policy that simply recycles some three billion dollars of federal money out of the Canada assistance plan and mainly into a hodgepodge of child tax credits and regressive tax deductions and that is all over the next seven years. In addition, a mere \$100 million will be spent over the same period on a special initiatives program to encourage innovative approaches to child care on a demonstration basis. The government will pay up to 75 per cent of the cost of provincial startup grants for the capital cost of nonprofit child care centres, with a view to creating 200,000 new nonprofit spaces by 1995, for a total of 400,000. Big deal. It would be hard to devise a more inadequate national child care program.

There are well over one million children in need of quality, affordable child care right now, and some 75 per cent of working women have children under the age of three. Yet most of the federal expenditures will do little to address the critical shortage of child care spaces, and while it may be no longer desirable to treat child care as a welfare issue under the Canada assistance plan, the overall impact of the tax-related changes will be undeniably regressive.

In addition, there is no provision for pilot projects to deal with the increasing number of parents who do not fit into the normal child care system: part-time workers, shift workers, immigrants, rural women and inhabitants of isolated communities. The absence of minimum national standards is equally disturbing. Such standards should stipulate child-staff ratios and staff qualifications and establish requirements for the training of child care workers and health and safety rules. In Alberta, for example, the only requirements for a child care centre's staff are that employees must be over 18 and one worker at every centre must have first aid training.

Finally, the child care program reveals all too clearly the current government's failure to recognize the urgent need to undertake comprehensive reform that will integrate both our employment and social assistance policies and our tax and transfer systems. In particular, it has failed to recognize the importance of available and affordable quality child care to an overall strategy that focuses on human resource development, improved education and training and ensuring that everyone has the opportunity to engage in meaningful work.

Take, for example, the critical related issue of parental leave that was sidestepped by the government's timid proposals. The official justification was that to address parental leave would have required opening up the messy issue of unemployment insurance reform and would have set off a chain reaction, to use the words of our esteemed Minister of Employment and Immigration. But a year earlier, after a multimillion dollar review of the unemployment insurance system, the Forget commission concluded that it would not be prudent for it to recommend changes to maternity benefits and parental leave in the absence of a mandate to recommend changes to other pieces of employment legislation related to employment standards, social assistance and so forth.

This sort of stalemate in policy development is totally unacceptable. You have one minister saying, "No, I cannot do it, it is the other minister's responsibility," and the other minister saying, "No, I cannot do it, it is someone else's responsibility." This reflects a clear abdication of leadership on the part of the federal government, and we can only hope that the government will soon recognize the need for a comprehensive review of the full range of current social and economic policies.

But back to Meech Lake. Even if the national government does decide to assert the necessary degree of leadership in the federal-provincial negotiations that inevitably must take place, the political dynamic set in motion by the accord will make it impossible.

1540

I will turn to my second area of concern, that is, the amendment procedures and the extensive veto powers over constitutional change granted to all the provinces. This will not only preclude meaningful Senate reform and the creation of new provinces--and I know that you have heard from many northern Canadians, including earlier this afternoon, I think--but also it is going to unacceptably increase provincial bargaining leverage across the full range of federal-provincial issues. It will enable the provinces to use the veto to extract concessions in a whole range of unrelated areas.

Finally, it is going to lead to political blackmail and paralysis and risk effectively immobilizing our federal system and our ability to hang together as a nation. When I try to explain this to people, it always brings to mind something that a friend in Newfoundland said to me in the first few days after the accord was announced back in May. He said, "Oh, great, now we have a veto over western wheat." At first glance, that seems incredible, but it is exactly what is going to happen. You are going to have Premier Peckford saying to Premier Getty, "I do not think we can really give you what you want in Senate reform until we listen to what you have to tell us about fisheries." That is exactly what is going to happen, although I am sure that you are all aware of what goes on in federal-provincial negotiations.

My third area of concern is the "distinct society" clause. The amendment dealing with Quebec as a distinct society will allow the Quebec government to override the charter and to increasingly isolate itself from the rest of Canada. What is important to recognize is that this is not just of concern to Canadians in Quebec. It is the overall integrity of the charter and our commitment to preserve and promote basic rights and freedoms that is being undermined. That has to be of concern to all of us.

In addition, as Quebec becomes increasingly isolated, the rest of Canada will be unable to benefit from progressive policy initiatives in Quebec, as we have in the past, and as we ought to in a dynamic federal system. This is where we have to remember that constitutions are not just a matter of legalese and of legal challenges before the courts.

Our Constitution is a symbolic document that is used in political battles, such as the once and future battles over the separation of Quebec. Here, I would just pause to say that contrary to what Premier Peterson and others say, that we must have Meech Lake because of the revival of the independence movement in Quebec, I say quite the opposite. Just give Jacques Parizeau the "distinct society" clause and see what he is going to do with it. We already know from people like Claude Morin that he sees this as quite compatible with his *épatiste* approach to the separation of Quebec.

In addition, in recognizing the Constitution as a symbolic document, it is also something that is used in ongoing lobbying efforts with governments and our legislatures in a wide range of critical areas of public policy. For example, we might find ourselves at some point lobbying a less than progressive Premier in British Columbia to adopt some legislative initiative that Quebec has undertaken, such as those in the past dealing with consumer protection or with no-fault automobile insurance.

However, we will henceforth be met with an additional objection that the Constitution has designated Quebec as a distinct society with special powers and that what is considered good for that distinct society is not necessarily relevant to the rest of Canada.

In any event, I would like to suggest that the "distinct society" clause approach to accommodating Quebec's special concerns for linguistic and culture security is misguided. Not only does it unacceptably equate linguistic groups with a particular geographic location, but also it provides insufficient guarantees for both the anglophone minority in Quebec and for francophones outside Quebec. I know you are hearing this from many groups that have already appeared before you.

As Raymond Breton notes, it transfers broad powers to the courts to decide matters of central societal importance, such as exactly what does constitute the distinct society and distinct identity. This last point I really want to emphasize, because you hear Lowell Murray and his minions and you hear many others, including Gil Rémillard, when he was put on the spot by the franco-Ontarians the other day. They all love to argue and say that section 2 is just great because it recognizes the fundamental bilingual characteristic of Canada.

My reply to them is have they not read constitutional history and have they not looked at the minority language and education rights that are in the charter right now. It is these provisions in the charter that clearly articulate the bilingual nature of Canada. You just have to read section 16 to see that. This is the historic compromise that provides the effective, although not perfect, answer to Wilfrid Laurier, who could plead only for a regime of tolerance during the infamous regulation 17 debate in Ontario. Also, these provisions are the response to Henri Bourassa earlier in the century who knew all too painfully the dangers of having to rely on benevolent government action to protect minority rights.

Now, with the provisions in the charter, we have unique, legally enforceable language and education rights that are reinforcing our commitment to bilingualism across the country, and they are providing invaluable support to the francophone minorities outside Quebec.

This all came to mind when I was watching the Journal special--I am not sure whether you caught it on the last two nights--on bilingualism in Canada. If you did not catch it, then they probably have videos of it that you could see. It was excellent. It demonstrated only too clearly that there is a whole new generation of Canadians out there who are growing up committed to preserving and promoting the French language and culture across the country.

The important thing to note is that this sends positive signals to Quebec. Even on the Journal program, eminent Quebec journalists like ??Lisanne Gagnon and Lise Bissonnette acknowledged that it made a difference, in the process of building up Quebecers' confidence in both themselves and in Canada, that the rest of Canada was clearly making efforts to promote bilingualism. They said this played an important role during the referendum debate in 1980.

It was frustrating as I watched the Journal and realized how much Canada has changed over the course of the 1970s and 1980s. It just reinforced my view that in concluding the Meech Lake accord, the first ministers are completely out of sync with the Canadian people, including Canadians in Quebec and they have completely misread Canadian history. It is just so frustrating to see how

quickly the present slips into the past, but how long it takes before historians can catch up and write something that will indicate exactly what the impact is and where we are going. I hope you are listening to the historians and the political scientists, because almost to a person they are concerned about the Meech Lake accord. I say that with due respect to the so-called Queen's provincial loyalists in Kingston.

The problem is that the "distinct society" clause is taking us backwards, because it is effectively undermining the historic compromise in the charter that has moved us forward towards the ideal of a bilingual, multicultural nation. It is going to potentially allow Quebec to undermine the minority language and education rights and other charter rights, given its special role to preserve and promote its distinct identity, distinct society. It is going to weaken the links between Quebec and the francophone minorities outside Quebec, where the French language and culture is flourishing--in a different environment, all right, but they need that link.

Equally important, by only requiring the other governments to preserve the fundamental characteristic, which is defined, you should know, in terms of English-speaking and French-speaking populations, not in terms of a society or something that implies institutions, by only putting that obligation on the governments outside Quebec, it gravely weakens the political momentum and the commitment to promote the interests of the francophone minorities outside Quebec.

This is why you are hearing so many concerns expressed by l'Association canadienne-française de l'Ontario and--I know they have been here--and the Fédération des francophones hors Quebec; the Canadian Jewish Congress, which I was reading about yesterday; I am not sure what Alliance Québec said today, if they made it; les Acadiens du Nouveau Brunswick; I am not sure if they are here, but they are certainly putting pressure on Frank McKenna; and all these groups. They know that it is no good to wait for a second round. With the Meech Lake accord entrenched, the brakes will be on and their political bargaining leverage, moral or otherwise, in future rounds of constitutional reform will be eliminated.

Now, just to make some suggestions about an alternative approach. Instead of the "distinct society" clause, we should all be debating a new preamble to the Constitution. If you will remember, this was the initial demand of Bourassa and Gil Rémillard in their five demands.

1550

The preamble should clearly set out the democratic principle of the sovereignty of the people, something our first ministers seem to have forgotten, as well as articulate the distinctive characteristics of the Canadian nation and society and our commitment to greater freedom, equality and justice for all Canadians. These distinctive characteristics, of course, must include a reference to the distinctive character of Quebec as the principal, but not exclusive, source of the French language and culture in Canada.

In addition, we should seriously consider an elected Senate with a constitutional requirement of a double majority vote in respect of any legislation dealing with language or culture. This is not just an idea coming out of the blue. It has been debated for probably as long as the five demands have been around on Quebec's plate.

We should also consider a special role for Quebec in respect of immigration, not giving it all to all the provinces; a guarantee of three judges from Quebec's civil law milieu, again, not giving the appointment power to all the provinces, and especially when we should be looking at an entirely new appointment procedure to the Supreme Court of Canada, when it is becoming all the more important to know who are our judges who are making fundamental decisions regarding our rights.

Finally, we should consider a veto for Quebec over constitutional change combined with a popular referendum procedure. It could be along the lines of the one suggested back in 1980; that at the very least this must be accomplished within the broader context of major institutional change, a revision of the current division of powers, negotiations on aboriginal rights and the repeal of the "notwithstanding" clause in the charter.

Meaningful constitutional reform, including the changes required to ensure that Quebec participates fully in our future constitutional evolution, must take place within this integrated framework. The Constitution belongs to all the people of Canada. It is about our future. It cannot be changed at random simply in response to the exigencies of current political preferences or pressures. With specific reference to the so-called Quebec round, of course, accommodating Quebec's special concerns are important, but not at the price of dismantling Canada. Quebec is an essential part of our country, our history and our society. If Quebec leaves, which I believe will be the inevitable result of the Meech Lake accord, then my country also disappears, and I refuse to let that happen.

I am convinced there is an as-yet silent majority of people in Quebec who are equally concerned to ensure that Canada continues to survive with a strong national government in addition to strong provincial governments. I suggest that you just have to go and start speaking to people who are concerned about the environment, child care activists, women in Quebec. There are women there who are willing to speak out and say there are going to be times when the Quebec government is not perfect, and there are going to be times when the environment minister is not doing as much as he should with regard to the St. Lawrence Seaway, and they will want to be able to pressure Ottawa and get the federal government to bring some pressure to bear. It is the same thing with protection of women's rights and child care, whatever. These Quebecers' voices have not been heard. Our current political leaders appear determined to shirk their public responsibility to encourage the necessary national debate that can lead to meaningful changes in the accord. This is totally unacceptable.

I will now turn to the fourth area of concern and deal with this more quickly. The fourth area of concern that I want to discuss is the constitutionally entrenched first ministers' conferences. This will lead inexorably to an unaccountable third level of government. It will accelerate and make irreversible the shift in political dynamism on matters of national importance from Ottawa to the provinces. It will prevent the national leadership required to reduce inequalities of wealth and opportunity across the country and to pursue greater social justice and generally meet the challenges that lie ahead.

Parliament and the provincial legislatures, and that includes you, will be relegated to mere ratification chambers. Canada's position, whether on international or domestic issues, will be reduced to the lowest common denominator of rival provincial interests. Thus, the Meech Lake accord, if implemented, means that we will no longer elect the federal government to

articulate and pursue the national interest. Instead, 11 governments, federal and provincial, will collectively speak for Canada and crucial matters of national policy will be determined in regular first ministers' conferences rather than by the federal cabinet.

The fifth area of concern, which I am going to mention only briefly, is the effective transfer to the provincial governments of the power of appointment to the Supreme Court of Canada and to the Senate. This will result in effective provincial control of two critical national institutions and will unacceptably and radically change the nature of our federal system.

I do not have any time to go into the problems that are going to arise as a result of the absence of a provision for breaking deadlocks and so forth. Already, I think we are seeing problems. There is a holdup in Senate vacancies because they have not been able to agree on appointments. If that is a problem now, it is going to increase in the future.

Finally, I cannot overemphasize how the overall impact of the proposed changes will result in a severe weakening of the national government. Equally alarming is that this means that the bilateral ententes we see emerging between Toronto and Quebec City on such matters as access to universities, environmental protection, participation in international conferences like our Francophonie, and now more recently, I notice, government procurement, will become increasingly irreversible and the Toronto-Quebec axis will become the central controlling element in Canadian federalism. This is certainly not my idea of Canada and it has not been the idea of Canada for 120 years.

Having enumerated all these concerns, and everybody always asks me this, you are certainly justified in asking yourselves, how on earth could 11 first ministers, all democratically elected and inspired by the so-called spirit of Meech Lake, have produced such an awful deal? Well, the answer lies in the fact that no one spoke for Canada during the negotiations. No one defended the fundamental values in the Charter of Rights and Freedoms to which the majority of Canadians subscribe. Canadians were frozen out of the process leading to the Meech Lake accord. Our voices were never heard, yet we are going to be haunted by the ghost of Meech Lake long after the Fathers of de-Confederation have passed from the scene.

It is not good enough for the proponents of the accord to reply that the accord is simply a limited constitutional deal with Quebec and that the demands of Quebec have been in the public domain and the subject of discussions for many years. The fact is that we never expected our Prime Minister to simply sit back and accept all of Quebec's demands, while at the same time granting additional concessions to all the other provincial premiers to gain their assent to the deal. This is exactly what happened. How else would we end up with a provision in our Constitution requiring us to discuss fisheries every year?

We never expected the Prime Minister to approach constitutional reform as if he were amending a corporate bylaw, with little consideration as to how all the changes would impact on our rights and freedoms. We elect our Prime Minister to lead a federal government that is unique and distinct from the provincial governments. We expect him to function as something more than simply a chairman of a board of premiers. We expect him, like all our federal representatives, to rise above parochial provincial interests and pursue the national interest. We expect him to govern wisely and to have some sort of vision of the kind of society we want ourselves and our children to live in. Finally, we expect him to seek ways to accommodate Quebec's special concerns

that will permit us to maintain our sense of national identity and strengthen our sense of national community.

Clearly, these expectations were betrayed at Meech Lake and the unfortunate result is an accord that is at odds with the vision of Canada and of Canadian society that I believe is shared by the wide majority of Canadians. More importantly, if ratified, the accord will set in motion unacceptable political dynamics that will gravely weaken national unity and eventually lead to national disintegration.

It is not acceptable to point, as a special joint committee did in its Pollyannaish report, to a mythical second round where we are going to correct the myriad of nonegregious errors. This is like giving away the Foreign Investment Review Agency and the national energy program and giving access to our financial markets and then trying to negotiate free trade. Look what a mess we have ended up with.

In conclusion, I want to end with the same warning I made before the special joint committee. Quite apart from all the substantive concerns I have mentioned, the widespread concern with the process leading up to the accord and since that time is merely a reflection of the profound cynicism with government that is all too prevalent among Canadians today. That our first ministers would even attempt to carve up the future of our country in such an alarmingly undemocratic way has simply intensified the disillusionment with our leaders and our public institutions.

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If the first ministers proceed to ratify the accord as a fait accompli, notwithstanding the widespread public concern that is being expressed, particularly in the course of these hearings, this will do irreparable damage to any efforts to restore faith in the political process. It will simply confirm the impression that our politicians are more concerned with their image and brokerage politics than with the concerns and interests of individual Canadians.

Those of us who have been involved in the debate from the beginning know the depth of public interest and concern. Canadians genuinely want to play a meaningful role in shaping the future of our country, our national destiny. We understand the issues at stake, the special concerns of Quebec for linguistic and cultural security, and we want an opportunity to shape the outcome.

At this stage, we are all depending on you to make up for the evident void of national leadership. We are depending on you to demonstrate a sense of history and to speak for future generations of Canadians for whom our present will soon be their past. They are the ones who will suffer the consequences of the accord and yet will have no mechanisms to hold us accountable.

What will we and the history books tell them? Will we tell them that we only looked for egregious, unbelievable errors, that we ignored the serious concerns raised by northern Canadians, women, the disabled, ethnocultural groups, native Canadians, environmentalists, educators and so many others? Will we tell them that 11 men decided the accord was so fragile that it could not withstand the rigours of democratic debate? Or will we tell them that meaningful public debate did finally take place, that our political leaders listened and acted upon our concerns and that we then concluded a better accord?

The choice is ours and clearly the second scenario is the only acceptable one, so we are counting on you to make these hearings meaningful. We hope you can persuade Premier Peterson to show vision and leadership, and convince him of the critical need to reopen the accord and go back to the constitutional bargaining table.

You can advise the Premier that if he really wants to assist in nation-building, he could say that having consulted the people, Ontario does not believe the country is well served by enhancing the provincial veto power over constitutional amendments. He could say he is prepared to negotiate a new amendment formula that is more flexible and that, for example, incorporates a popular referendum procedure combined with a veto for Quebec.

He could say that he is persuaded Canadians really want to ensure the pre-eminence of our charter and that he is prepared to renegotiate the "distinct society" clause in the context of a new preamble to the Constitution; again, something that was initially demanded by Quebec.

At the same time, he should reaffirm Ontario's commitment to preserve and promote the bilingual and multicultural character of Canada as already set out in our Constitution in the provisions for minority language and education rights in section 27. He should then reaffirm Ontario's commitment to declare itself officially bilingual in the near future. In the spirit of nation-building, Premier Peterson should also say that he does not believe all provinces require a constitutional role in immigration or in the appointment of Supreme Court judges and that Quebec's special concerns in this regard should be addressed on their own.

He could say that he is prepared to consider restrictions on the federal spending power, but in the broader context of revising the current outdated division of powers and clarifying, for example, what exactly is meant by areas of exclusive provincial jurisdiction. Any such amendment must also ensure, in clear and unambiguous terms the federal ability to establish effective national programs with minimum national standards.

Finally, Premier Peterson should vigorously promote meaningful Senate reform and such ideas as a requirement for double majority votes in respect of linguistic and cultural matters.

These renewed negotiations should be viewed in a positive light. They will provide a constructive opportunity for all Canadians to examine the significant challenges to the Canadian society and economy that lie ahead and the respective roles the federal and provincial governments should play in meeting those challenges. They will allow all Canadians to discuss alternatives to the Meech Lake accord that will accommodate Quebec's special concerns, but at the same time strengthen our sense of national community and national identity rather than lead to national disintegration.

Our governments and first ministers must recognize the broader public interest involved in constitutional change. Nothing less than the future of Canada as a progressive, dynamic nation is at stake.

Mr. Chairman: Thank you very much for a very full and well thought out paper which I think has more ideas and points in it than we are going to be able to cover in our questioning.

Ms. Coyne: I brought some copies.

Mr. Chairman: Good. We are indebted to you for taking the time to think that through and to put together a package. We will start the questioning with Mr. Eves.

Mr. Eves: You have addressed many of the questions as we went along. It was a very well thought out and forceful presentation. This is probably a rhetorical question at this point: I presume you think the accord is so flawed that it could not possibly be salvaged in its present form and that we should really start anew with some public input.

Ms. Coyne: Yes. It may be sort of rhetorical in the sense that I guess I have answered it. It really is. I will not reiterate what I said, but I stand by it. People ask, "How could this possibly happen?" I stand by what I said about our Prime Minister. It was produced in hothouse conditions and I really do not believe that they, the first ministers, realized the impact it was going to have and that constitutional reform cannot be undertaken any longer in those kinds of circumstances.

Mr. Eves: That leads me to the next two questions, and you may have already answered this one, that I had written down as you were making your presentation. Why do you suppose that the 11 first ministers, and especially the Premier of Ontario, agreed to the accord in the first place and why they have all sort of agreed to an unwritten pact, if you will, that there will be no changes whatsoever and that any change at all might unravel the entire deal, as they put it? For example, what did Ontario get out of this? Why would the Premier of Ontario agree to this?

Ms. Coyne: I do not doubt the sincerity of some of the premiers, or most of them, that they want Quebec to sign, but when you go into a negotiation where the Prime Minister is not demanding and is giving you everything, what can you say? In the context of negotiations, I presume you are not necessarily going to say no and those of us outside were not privy to exactly what would happen. I presume and I have heard that several premiers did protest and raise complaints, but that they really thought this was just getting the Quebec issue out of the way.

I is rather the same misguided way in which Robert Bourassa and the Prime Minister think, "Let us just acknowledge Quebec as a distinct society and then we are going to get the constitutional issue out of the way and that is going to be fine." The trouble, as I have demonstrated here, is that they are answering yesterday's debates with yesterday's questions. Even the Quebec population is way beyond where Robert Bourassa thinks it is. I think it was a power exchange too. They just did not realize they were impacting on rights and freedoms and that is why we ended up with this flawed package.

Mr. Eves: Why do you suppose the 11 first ministers, almost to a person, with the exception I might add of Premier Bourassa, have refused public hearings? At least, they refused public hearings between the first draft in late April and the final draft in early June. For example, this Premier was asked in question period if he would appoint a committee of the Legislature to hold public hearings before the final draft was agreed upon and steadfastly refused. Then after the meeting in June, when Brian sort of gave them the nod, some of them came out afterwards and said, "OK, we will hold public hearings now but we will not change it?"

Ms. Coyne: My only answer to that is that, first of all, it is of course unacceptable that they are not holding public hearings. They are completely out of sync with the Canadian people. They do not realize that

constitutional reform does not just involve first ministers. As I have said, it impacts on all of us and we all want to be involved in it. It is as Alan Cairns said--I do not know whether he is appearing here; he should if he is not--"Whose Constitution is it anyway?" Things have changed since 1982. It is no longer a question of trading powers, legislative, executive, whatever, among first ministers. It involves people. We have rights and freedoms we can assert against all governments. We have to be involved in constitutional reform.

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All I can say is that the first ministers, especially those who are refusing public hearings--I am going to give Premier Peterson the benefit of the doubt for the moment that he is going to listen to this and that you guys will be able to persuade him--are proceeding in a totally unacceptable way. They are going to suffer the consequences in the future because, unless my instinct is completely off, the Canadian people do not support this kind of treatment.

Mr. Cordiano: I too would like to thank you for a very eloquent and forceful presentation. Certainly, I have a great deal of respect for your views. Let me start with perhaps the least difficult question; that is, in terms of posing the question, not in terms of trying to solve the question. It is something we are all grappling with, the entire process of constitutional reform and how we have more meaningful public participation. Can you elaborate on that?

We may not be able to change the process as it stands now with regard to this accord, but we are looking to ongoing constitutional reform. That may or may not be the case. All I am saying is that we have an accord before us with respect to constitutional reform. We have to deal with it in the manner that has been set out. I just think we have to proceed from here if we are going to deal with it in a different fashion, one that is more meaningful for public participation.

Ms. Coyne: I have to preface my remarks by saying that you can change the accord and I proceed on that basis. I will throw out some suggestions but that applies to reopening the accord as well.

In fact, I participated in something dealing with the ??Commonwealth Parliamentary Association and set out in more detail--I brought a copy of it with me--some ideas of how we might set up an ongoing mechanism.

One way, of course, is to establish legislative committees in the different provinces and at the federal level and require hearings and provide the opportunity for people to appear and make suggestions. What you have to do is identify different stages of constitutional reform, the stage where you are initiating it and putting together the proposals, then the stage of looking at them and then the question of ratification. There we are into another thing. Right now, all it requires is a majority vote or whatever. We should be looking at other mechanisms such as a special majority vote in legislatures.

The more important mechanism that may open up the process as well is the idea of a referendum procedure. I am very firm in putting that forward. I know there is lots of support for that kind of mechanism. It is in this paper that I brought down. There have been suggestions in the past--there was in 1980--and there are examples you can look at, other countries. Gil Rémillard and some Quebecers supported the idea back in the early 1980s. We have had

referendums in Canada. It is a way of generating public debate. I cannot think of all the details, but it would generate a structure through which popular input would be put in.

In terms of the process at this point, one way is to set up legislative committee hearings and really go out and listen to the people. In terms of reopening this accord, this means doing it in every province. I assume you guys are listening and are going to write a reasonable report, but other provinces have not held hearings, and even Quebec did it only in advance of the Langevin hearing. I do not think we have heard the voices of all of Quebec. There is going to have to be a decision that we have meaningful hearings in all the provinces and something will have to be done to redo the situation in Ottawa. At least the Senate is having meaningful hearings, but the special joint committee was obviously unacceptable.

I am just trying to bring it back to tell you that it has to be done in respect of this accord. That means across the country. I should just say that if, for example, this committee is considering travelling outside Ontario, as I understand it might be, then there is an obligation on you to go everywhere in Canada. It is not just a question of going out to Quebec. As I said, the Constitution belongs to everyone. I would be perfectly willing to help you find people in every province who would be willing to assist you in having hearings, especially the ones who have been denied hearings in Alberta and Saskatchewan and it sounds like in British Columbia.

Mr. Cordiano: It seems to me that your suggestion about holding a referendum--that is with specific reference to language and culture; is that what you are talking about?

Ms. Coyne: Oh no, I was referring to referendums on constitutional change generally.

Mr. Cordiano: What sorts of constitutional change? It seems to me that what we are doing now is virtually moving in the direction where we are going to be constitutionalizing every difficulty we have in our society. That seems to be the direction we are going in.

Ms. Coyne: You mean if we adopt the Meech Lake accord?

Mr. Cordiano: No. Prior to that. With the advent of the Charter of Rights, citizens have the opportunity to bring whatever concerns they have to the Supreme Court to determine if their rights have been denied, etc. That will inevitably lead to conflicts in our society where some of these issues will have to be resolved constitutionally in one way or another.

Ms. Coyne: Perhaps I am misunderstanding you, but I do not see that difficulty at all. The charter and our ability to go to the Supreme Court of Canada, if necessary, to defend our rights, and that includes language and education rights and whatever, is a great thing. It is an addition to our federal system; it makes us more dynamic. We now have an additional outlet where we can go and say to both levels of government, "You can't do that; we have certain basic rights and freedoms." I do not understand how that is institutionalizing difficulties.

Mr. Cordiano: Perhaps what I was trying to get at was that when we are trying to make constitutional changes, and I believe that you obviously could not have the situation where Quebec is not in the Constitution. We were going to have some sort of constitutional accommodation of Quebec or reach some sort of agreement. You are not suggesting that Quebec be left out of the Constitution.

Ms. Coyne: No. I have put forward an alternative, in fact.

Mr. Cordiano: That is what I am saying. So inevitably we would have some sort of constitutional conference, and whatever scheme was designed, if we did not have Meech Lake.

Ms. Coyne: Yes.

Mr. Cordiano: What I am saying is that inevitably there are more groups that are interested in constitutional reform, and the average citizen perhaps may be interested in constitutional reform. We have to grapple with what that means in terms of the time that is required to do this and in terms of the resources available to us as a nation to do this, because that will be an ongoing thing. Indeed, from this point on, if we are going to have annual conferences, we are going to have to try and work that out somehow.

Ms. Coyne: You are assuming, first of all, the Meech Lake accord is going through, and again I will assume that it is not. For example, let us talk about the alternative way to accommodate Quebec. Of course many more citizens are interested; that is a good thing. Sure, it makes things complicated, but that is democracy. What I think could happen here is an example; you are hearing from a whole range of people, groups and individuals right now.

Let us say hypothetically, supposing there had not been any suggestions, that Quebec had come forward with its five demands. You could hold hearings and say: "OK, people in Ontario and in every other province would do this. Here are Quebec's demands. Let's hear what you have to say--alternatives, etc." You would write a report saying, "We do/do not accept this; this is what the people in Ontario think." Again, I am just thinking out loud here, but similar kinds of hearings would take place federally.

Then you would have a federal-provincial conference--again, I am setting aside for a moment the possibility of a referendum--where you would hammer out the acceptable package. That is where leadership comes in, and that is where we have to get into a situation where at least we have a Prime Minister who is going to talk for Canada and say to some of the provinces, "Well, Newfoundland, we really don't think fisheries is relevant to accommodating Quebec. We don't think it is necessary to debate Senate reform every year; let's have it right now and accommodate Quebec." That is where the leadership comes in; that is where you would finalize again. The next stage might be to have a referendum, if you then want to get the referendum.

That is one way one way that you could do it. That is one way you could funnel in groups and accommodate and be able to deal with the many more Canadians who are interested in constitutional reform. I think that is great. You just have to be imaginative and think up ways to do it.

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I am suggesting, in terms of reopening this accord, you could start the process. As I say, we have a void in Ottawa. You are in the strange position of being the first group that is actually holding, we hope, meaningful hearings. You could come out and say, as I have suggested--and you do not have to accept all my suggestions--"We are hearing this. If it has to be reopened, we want to make it clear to Quebec that we want to deal with their special concerns especially and not just give them everything they want. Here's our alternative. Over to you, federal government. Get your act together."

Mr. Cordiano: I just have one final question, as we are running out of time. It ties somewhat into the area of spending powers. It seems to me that what you are implying--and I just want some clarification on this--is that we should stipulate constitutionally what we mean by national objectives or national standards. I know that "national standards" is the preferable phrase for many groups, but what I am getting at is, should we have in the Constitution, for example, a stipulation whereby we are saying that programs in the social area should have these qualities or these objectives, such as universality, affordability and those kinds of things?

Ms. Coyne: If we are talking generally about how to entrench some restrictions on the federal spending power, I do not want to just deal with one element, because obviously I have expressed my concerns about the entire way it is being done here. I just want to preface my comment by saying that no matter what you put in, even if you mention national standards, one of the problems that you have to make sure that you avoid right from the very beginning is not to build in disincentives to the federal government even initiating a program. That is what is going to happen under the Meech Lake accord with the opting-out procedure. I have to address this first.

Mr. Cordiano: I do not understand that.

Ms. Coyne: Because the provinces can opt out with financial compensation, you are either going to end up, as we did in child care, with a program that is just money going out to the--

Mr. Cordiano: Is that not a lack of will on the part of the national government? The standards or objectives could have been very carefully outlined.

Ms. Coyne: But under the spirit of Meech Lake, they could not do that, and the minute they did start setting some standards, as I suggested here, the provinces would try to exercise their right to opt out with financial compensation.

Let us just assume that is the case. Let us not even worry about that. The ambiguity is there, the sense that says: "Oh God, we have to make sure whether this is a national standard that will be going to the heads of the federal bureaucrats. Is this a national standard that Quebec might want to opt out of, or any other province might want to opt out of? We had better change this language, or let us negotiate a bit more."

I am talking about disincentives that are being built in way back in the process, so that we are going to end up with either a lowest-common-denominator program or no program at all, because what federal government is going to want to announce a program, get absolutely no credit for it and just be passing money over to the provincial governments?

Now, getting back to your point: If we do have to entrench some restrictions on the federal spending power, then you have to go back and look at some of the past proposals. There have been proposals in the past whereby, for instance, at least when there was opting out, there would be payments directly to the people in the province and there were more disincentives in the proposals to a province opting out.

My bottom line in what I said today was that we really want to minimize opting out. What is opting out? Does a province only conditionally belong to Canada? If it does not like something that goes on nationally, it opts out?

We have to look at the changed situation, mobility rights and all this. If I want to move to British Columbia, but they have a crummy child care system and I have children, I am really going to decide that maybe I do not want to move there for the job, even though it is a better job. All these kinds of things have changed.

Back to your point: What do you put in? Of course, I want to preserve the ability to set minimum national standards. That is not even there right now. That is clear. I am sure you have heard all the arguments--

Mr. Cordiano: I do not know if it is clear.

Ms. Coyne: Because it is mentioned explicitly in the immigration sections and not mentioned in the spending power sections, there is no doubt in my mind that a court would say--and the courts are now inevitably involved in this, as they should not be because these are political issues--they cannot set national standards. But even assuming that they can, how detailed should you get? I would say--here we are just getting into legalese, and I do not want to get into that; my students would be amazed if they heard me getting into the legalities--that is almost a drafting thing.

You have to sit down and say, "How detailed do we want to get?" I would say probably you do not have to get that detailed. You do not have to set out comprehensive public administration and five points on the medicare perhaps as long as you have national standards and public debate has taken place so that if it ever went to the courts, they would say, "Well, it was clear that this was meant to apply to the medicare situation."

You would not want to hamstring the government completely, and that gets back to the fundamental issue: What do you put in a constitution and what do you not? What is constitutionally relevant? Whatever you stick in a constitution potentially is going to end up in the courts. We do not want courts--I believe in leaving flexibility for the governments when you deal with political issues. Yes, you do not want to get too detailed, but at least make sure that they can set minimum national standards.

Mr. Chairman: I am just mindful of both your time and also--are you still all right?

Ms. Coyne: Yes. I am all right.

Mr. Chairman: If a couple of members disappear, it is not because of your comments; there are some who have to get a plane to London, Ontario, and I just did not want you to think they were leaving for some other reason.

Mr. Elliot: Is there going to be another presentation this afternoon?

Mr. Chairman: No. As we said, the other person is not here--is in a plane, in fact.

Mr. Breaugh: I have argued for some time now that this process is intolerable, that so far what has transpired here is undemocratic, not wise and real dumb. I think I would disagree on a number of areas with your assessment of what this accord means and whether the sky is falling and disaster is imminent and a range of other things, but that is pretty normal.

What I am concerned about is that we have to change this process around substantively. It seems to me, whether anybody in the world wanted it to as we

began these hearings, that change is happening. This afternoon, if people do not want to pay any attention to us, that is fine; but we are going to a lot of expense and bother to televise these proceedings and put them on a satellite. Anybody in Canada who has a mind to and has nothing better this afternoon can watch the proceedings and send us a letter, saying, "You jerk, you are wrong again."

The process is evolving into something that I think is a little more defensible. I do not take away for a moment from the fact that Brian Mulroney was elected Prime Minister of Canada. I do not know how that happened. I cannot find anybody who will admit to any responsibility for it, but it did happen. But he was not elected, in my recollection of it anyway, to go away with 10 other people, privately, and rewrite the Canadian Constitution. I do not remember seeing that in anybody's election platform. None of our premiers was elected on that basis either. This concept, which some have made legit by calling it executive decision-making, is alien to a parliamentary system, and it is alien certainly to Canada.

What I am concerned about is that we now make our assessments of this accord, as this committee has attempted to do now, make our judgement calls as to whether it is good, bad or horrible and whether we can live with this or not and then turn our minds to the process question, which you have addressed in a number of the things that you had to say this afternoon.

I really think it is critical now that we do two or three things. First, we must recognize that there is a Constitution at work in this country, and new as this idea may be to us as Canadians, that it makes things work a little differently. Up until now, Supreme Court decisions did not change the way provincial governments offered programs the next day; now they do. People have rights, which they are just beginning to explore, under the Constitution, and some are arguing they have had them taken away in this agreement before they have even had a chance to exercise them. I think we do have to turn our minds to that. Some of what you had to say, I think, dealt with that process question. I would not get quite as elaborate as you did in your recommendations about referendums and things of that nature.

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If I were to put a criticism to the Meech Lake accord as a package, it is that in the end, when you have dissected all the parts and analysed how it goes--you do have to make a judgement call, whether anybody likes it or not, about whether this is good or bad for the country--it is missing any fire or any vision. You know, we often accused Trudeau of having hallucinations rather than visions, but at least he was working in that area; you could say there was something good about the man. But I do not see much in this agreement that is visionary, that speaks about what kind of nation we want to have.

Maybe people will argue that we already did that last time and we do not need to do it again. I would criticize this agreement for not going far enough in many areas. They just could not make up their minds, so 11 people kind of dithered around and struck a deal; it may result in being hamstrung. The greatest concern I have with this process is that at the end of it I am really getting more and more concerned as we go on that this could be an intolerable situation out of which there is no escape. If we actually do get 11 first ministers, operating on an annual basis, creating this kind of mess, we will never survive the thing. The lawyers will be happy, but the people will be sad.

I would really like to hear a little bit more from you about how we rectify this process. Before you start, I really want to put on the table that

whether anybody in this room likes it or not, this process changed the day this committee set up shop, opened up the television cameras and put out a signal. I do not think you can reverse that. If people were advocating a secret, no-amendments, "everyone rubberstamped this" process, you cannot do that and have public hearings at the same time.

I know that the joint committee had a rather unusual approach to its set of public hearings. It was probably the first private set of public hearings held in Canada, but they did that. To their credit, they went through the process and wrote their report as good parliamentarians do. But this one is a little different. I am just interested in how you would pursue it from this point on.

Ms. Coyne: I could not agree with you more. I do not have to reiterate about how the accord exhibits a lack of vision and is an intolerable situation, although I think--I am the eternal optimist--there is an escape, it has to be reopened, and that somehow the democratic will is going to prevail and the voices of all the people who are so concerned about it and complaining about it are going to be heard eventually.

How do you get out of it? Without reiterating what I am saying, at least you guys are saying that you are listening to us. You can see by the response, and I am assuming you have hearings now for almost two months, that there are a lot of people out there who are interested and who are coming and expressing their concerns.

You are right. Things have totally changed. This would not have happened in pre-1980 days, anyway, because we certainly saw even in the 1980-81 period a lot of groups and individuals getting involved in the process. Then we had hearings that actually led to changes in the accord leading up to 1981 and even after the November package, if you will recall. The politicians listened and there was give and take.

Right now, we are hoping that you guys will at least set the example, but we are in a particularly awful situation right now where we have to convince the Premier, because it is not your word alone. He is increasingly giving some signals that he is not listening; you have to convince him to go back, because currently the actual amendment formula that is in our Constitution says that these 11 guys can sit around the table, and once resolutions are passed through the legislatures, the process goes on.

The thing is that there is a difference between that and constitutional morality or whatever you want to refer to it as. What you are seeing here is that the Constitution no longer can be viewed as the preserve of 11 men, it belongs to the people, and there has to be a different kind of process. I for one would have much preferred obviously to have been able to avoid the kind of amendment formula that ended up in 1981 and ended up with the referendum procedure that was in place in 1980.

Anyway, let us take it from the situation we have right now. Part of what you guys need to recommend in addition to, as I would say, an alternative package for Premier Peterson to go back to the table with, is a new amendment formula too. There has got to be a provision in there now for open hearings in every province because, of course, it is unacceptable that it is going through provinces without any hearings. We all know, because of the parliamentary system, that if you have got a majority in the House, they toe the government line and it is game over.

I would suggest that you also put in some recommendations about, at the very least, mandatory legislative committee hearings in every province and, federally, some suggestions about the various stages. Hearings should even be held at the stage when the agenda is being set. You should call some people who are parliamentary experts like John Holtby--I think he has appeared before the special joint committee--and others who have been involved with parliamentary reform. They could perhaps give you suggestions as to how to structure something. You may not want to entrench all the details again in a Constitution, but I think we really have to look at a different constitutional amendment formula.

My preference would be also to look for a referendum. Heaven forbid that this could happen, but if there was a national election where this became an issue--and it could very well become an issue, although we still seem to have a void of national leadership--then you might get some public debate going and some support and get some indication of where the public is at. But, at the very least, I think you could go forward and make some recommendations as to a better structured system that would impose obligations on at least all the premiers and require open votes, for example, or ways in which the people's voice could really be expressed.

Mr. Breaugh: One area where I sense that you and I would differ on a fair amount, I sensed in what you had to say that you have this strong belief in a strong, central, federal government. I have that in a sense, but it is certainly mitigated by the simple, hard fact that with a very strong, central, federal government for more than a century we have been unable to meet our legal obligations to our aboriginal people. That is one of probably 900 different examples of things that have not happened.

I am not persuaded that there is not a better way to govern this country or at least that some alterations could not be put in place that would be better. I think what I am hoping for is that there might be an outbreak of democracy somewhere in this country. It could rear its ugly head at any moment, you never know. People might get interested in this kind of stuff. There might be an opportunity at various legislative buildings throughout the nation for people to express their opinions.

I think there is a bit of awareness now in Canada that "This constitutional stuff has something do with me." I think there is a vague sense of "I am not quite sure what that relationship is, but these people are making decisions under challenges to the Constitution and they do seem to be changing the circumstances under which I live and work and make my own personal decisions."

I think there is some hope there. I would just conclude by saying that I do not share your analysis of the accord to some of the extremes. Perhaps you are using a little rhetoric here and there. I have done that myself from time to time. I do not think that is bad. I do not sense that the world will end if this accord ever does get finalized, but I think it may produce a significant change in the politics of Canada if it really does bring about some more democracy to the process.

In part, the reason I believe that is that I am sure the 11 men who went behind closed doors to strike this agreement felt they were doing their duty the way they ought to do it. I do not accuse any of them of bad intentions. I think it is not their fault, it is the fault of the rest of us, that it happened. When you sit down afterwards and analyse that process, it is quite an outrageous process, but I believe they went there with good intentions. I

believe it is our job to assess what are the ramifications of this agreement that they struck, and our job to make sure that this kind of process does not happen again.

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Ms. Coyne: You made a number of points. First of all, I agree with you the world will not end, but Canada is going to end. I also agree with you that they went in with good intentions, but they were completely out of sync with Canadian people and they had not realized how things had changed since 1982.

This brings me to your point about strong federal government. My point constantly was strong, national leadership too. I am not in any sense implying heavy-handed centralism that some people keep talking about. "Oh, you want to do everything instead of the provinces." When I talk about national programs, I am certainly prepared to look at provincial delivery. It is the idea of the federal government being able to at least knock provincial heads together or say, "Hey, this is something everyone should benefit from." It is the political dynamics in the accord that are going to prevent that, that I am really concerned about and I am surprised you do not share that. I am even more surprised that your federal leader does not support that. As I say to my students, he is broadly bent on this issue.

Interjection.

Ms. Coyne: That is right. In terms of the effect of the charter, what people have not realized--as I say, the ministers are out of sync with the people--is that it is having a nationalizing impact and that includes people in Quebec, because it has given us rights and it is also, with the broad equality rights, it is appealing to nonterritorial identities, i.e., we are not necessarily living Ontario; I am a woman, or I belong to a specific ethnic group, or I have shared concerns if I am a disabled person.

It is incredible the networks that have built up across Canada just since 1982 and just before that. I am aware of that in terms of my involvement with the Canadian coalition. That includes into Quebec, child care issues and I will not go through the examples I was giving. If you go in and ask environmentalists, yes, they will agree that we share concerns in environmental issues and we want a national government that is going to be able to say to Clifford Lincoln in Quebec, "You must do X, Y, Z in the St. Lawrence Seaway."

The first ministers went in and they really are out of sync. They are not aware that the Canadian population and the people have changed.

Going back to good intentions and going back to my point about national leadership, yes, they went in with good intentions, but now what it has done is it has just sparked and made evident what has been emerging over the last three or four years and now it is your role to try and say: "Yes, there has to be an outbreak of democracy and here are some suggestions of ways to do it. You guys have to go back to the bargaining table and listen to these people."

Mr. Elliot: I would like to thank you very much for a very dynamic, comprehensive view of the situation. Yesterday when we finished up, we had six representatives of the Jewish Congress of Toronto here and probably a bevy of the best legal minds available to argue this particular point. I think you singlehandedly have risen to a prominence to share the centre stage with them,

because in my mind what you have done is you have very clearly identified a very complex problem in all of its complexities that we have to address over a long interval of time.

As a person who by profession solves problems, I think we have to look at where we have come from, and the comment I would like to make there is the fact that very quickly we have got control of our own Constitution, we brought in a Charter of Rights and now we have a proposed Meech Lake accord in front of us that has been signed by 11 people on the understanding that it would be ratified by their 11 governments within three years of the signing date, which, being June 3, means everything has to be finished up, if the deal is to be kept, by June 2, 1990.

I agree with you that what is happening here in the three weeks we have been sitting so far has been an evolutionary process, too. Our thinking is evolving as we go in this particular exercise, and I think that is good, because I think it is a living example of what has to happen when you are building a Constitution on a continuous basis.

My question also relates to down the road. If we are going to continue as a country, when we sign agreements, we have to live up to those agreements. My question to you is, because we are the first legislative committee to start doing this kind of process, presuming we successfully negotiate an opening up, is there time to take things back and meet the commitments made to Quebec on June 3, 1987. We have got a little over two years.

Ms. Coyne: I certainly agree there is time. When you say "meet the commitments made to Quebec," of course, but what is equally important is--and Premier Peterson can do this and, hopefully, more effective people in Ottawa--to persuade Premier Bourassa to let us really have a debate also in Quebec and say: "Here are the concerns that are being raised in the course of select committee hearings"--hopefully in the other provinces in addition to Ontario--"What do you guys think? If you really do want to stay in Canada, could you hold hearings?"

I would also like to see the debate take place in Quebec and more effort be put in there. So when I say "meet the commitments made," I am presuming also goodwill on the part of Quebec, that it is realizing, as much as I hope Premier Peterson and all the other premiers are realizing, that it just cannot go ahead and do this and that those are not frozen commitments. It is certainly a commitment of goodwill that we definitely are into the next stage.

Do not forget that in 1981 and 1982 when we brought in the new Constitution it was not game over there right then. Negotiations did start right away again. Letters were exchanged and all this, but we just had a particular political situation with Lévesque and that was the way it had to be. I am presuming goodwill.

We have a Liberal federalist government in Quebec and it will also be reading your report with great interest and especially if you write it in the sense of, "We did not really even address your special concerns in a special way and it is going to have this impact," then they will be interested too. We only held hearings just before the Langevin committee meeting, and in fact there were some changes made at the Langevin committee in response to those hearings but those hearings were, as far as I could tell, mainly academics and people who seemed to have been immersed in the process up to that date.

On the other side of things, the nationalist side of things, the debate

in Quebec really just has not taken place because it has taken place between the provincialists and the nationalists. I would presume that a process could get put in motion and I am not afraid of it. That is what I said here. We do not want to tell our children that the 11 men were just so worried that the accord was so fragile that it could not withstand debate, so we passed it. That cannot be and I refuse to let that be the outcome. I am hoping you guys will help assist the debate.

Mr. Chairman: Thank you very much. I think we have covered a wide range of territory and again I want to thank you for putting forward your presentation in that way. I think you did it as well in a challenging and provocative way.

As a number of people have said, and I think it bears repeating, we are all in this committee on a journey. I am not quite sure where we all began, but we are on a journey. I do not think we know where we are going to end up, but we have heard many things over the three weeks and we have a number of weeks to go. I think it is important to remember in things constitutional that time and discussion and the interplay of different ideas then creates new ideas and perhaps new concepts and perhaps ways of moving that right now we are not aware of, but which will emerge as we go on.

It is difficult, certainly in the context within which this has been given to us and to others, to try to make clear that we do want to look at the accord critically and helpfully and try to come up with something that is sensible, reasonable and, hopefully, right. We are not there yet, but I think we have to have these hearings and we are indebted that people who have great concerns and who perhaps have concerns about whether it is worthwhile coming forward in fact do so.

In this way we can put on the public record the issues, some new approaches and some ways of handling some of these things so that when we sit down at some future point, in a month or two, to try to determine as a committee where we ought to go, we are also going to be mindful that, whoever is sitting up on the second floor at the east end, whether his name is David Peterson, Andy Brandt or Bob Rae, as a committee what we are bringing forward to the Legislature, hopefully for its approval, is something that can then lead on to a next step, whatever that might be, because this is not, and you are not suggesting this at all, an academic exercise that we are going through. This is real and there are some terribly critical issues. We thank you for helping us today.

Ms. Coyne: Thank you.

Mr. Chairman: We stand adjourned until tomorrow morning in London, Ontario, at 10 o'clock.

The committee adjourned at 4:50 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

THURSDAY, FEBRUARY 25, 1988

Morning Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Farnan, Michael (Cambridge NDP) for Mr. Allen

Clerk: Deller, Deborah

Staff:

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Hudecki, Dr. Dennis, Professor, Philosophy Department, Brescia College,
University of Western Ontario

From the London Women Teachers' Association:

Pieterston, Carla, President

Individual Presentation:

Robertson, William M.

From the Refugee Host Program, A. R. Kaufman Young Men's Christian Association:

Czesnik, Anna, Co-ordinator

Paterson, Richard, Volunteer

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Thursday, February 25, 1988

The committee met at 10:02 a.m. in Carleton Hall, Holiday Inn City Centre, London, Ontario.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good morning, ladies and gentlemen, and welcome to today's hearings, which are taking place in London. This is the first time the committee has been outside of Toronto. We are pleased to be here.

I wonder if I might call upon Marietta Roberts, the member for Elgin, to say a few words.

Miss Roberts: Thank you, Mr. Chairman. I would like to welcome you and members of the select committee on constitutional reform here to southwestern Ontario. I am pleased that this is our first trip outside of Toronto. I am sure we will have many interesting presentations today. I am looking forward to showing you what you would like to see in southwestern Ontario if we have any particular time.

Welcome again. I am sorry the Premier (Mr. Peterson) is not here to shake your hands.

Mr. Breaugh: What is name again?

Miss Roberts: I will get his name.

Mr. Chairman: I wonder if I might then call upon Dennis Hudecki from the University of Western Ontario to come forward as our first witness.

Professor Hudecki, we appreciate your coming here today. As you may be aware, our procedures are fairly informal. If you would like to make your presentation, we will follow that up with questions from members of the committee.

Dr. Hudecki: That is fine.

Mr. Chairman: Please go ahead.

DENNIS HUDECKI

Dr. Hudecki: First, I want to express my appreciation to the government for the very existence of this committee. You have a very important task. I have only seen little bits of you on TV and I think you are doing a good job. I have seen you on the Ontario station. I find that your response is sensitive and intelligent; so I wish you well. I also appreciate your coming to London, because there is no way I would have been able to get to Toronto. I welcome you to our city.

In this submission, I will put forward and defend three theses about the Meech Lake accord. I submit that if even one of these is true--and I think all three are--then the Meech Lake accord should not be ratified by the Ontario government. The three theses I want to defend are that the Meech Lake accord betrays Canada's highest values; that the accord destroys Canada's identity as a multicultural, bilingual country; and that the accord sets into the Constitution structures that are divisive and destructive of Canada's nationhood.

Before I defend these theses, let me say that it is undoubtedly a great thing to have Quebec in on a national accord and that any deal at all was struck is a hopeful sign; yet I suggest that this particular deal should be rejected since the price for Quebec's membership in it is too high. The Meech Lake accord, I am arguing, is analogous to a family that so much wants one of its members to return home that it is willing to compromise its ethical and religious values and the basic rules concerning respect for other people in the family. This family would be making a terrible mistake if it were to betray itself in this way. The family, I would say, would have lost its way and set into motion a demoralizing process such that it would end up worse off than before.

The Meech Lake accord, I argue, in its enthusiasm to bring Quebec on board, likewise loses sight of what is most important to Canada. The accord then is so destructive of what is important to Canada that the Ontario government should reject it.

Let me briefly defend each of my three theses. The first is that the Meech Lake accord betrays Canada's highest values, which consist in Canada's commitment to human rights, those rights, in particular, that are expressed in the 1982 Charter of Rights and Freedoms. Furthermore, the idea of human rights is not replaced by some other high ideal to which Canada will be committed. If Canada stands for anything, as I think it now does, it is that beneath the diversity of languages, cultures and regions, people are first of all to be considered as equals, just because they are human, and that certain fundamental rights and privileges are theirs just by virtue of their humanity.

Examples of such rights are the right to life, liberty and security of the person, the right to free speech and opinion, the right to assemble and the right to equal opportunity regardless of race, colour, creed or sex. This political philosophy might be called classical liberalism. It has roots going back to John Stuart Mill and John Locke, and even further back to Aquinas, the Bible and Aristotle. The very best in most humane countries in the world have embraced this liberal tradition and have made human rights their cornerstone. They have proudly held up this idea to the world, claiming that every human being in the world has human rights and that the countries which most deserve our respect and friendship are those countries which recognize these rights.

Classic liberalism is a successful political philosophy intellectually, morally and practically. It works, it endures and countries that have embraced this philosophy have not only survived but flourished. Granted, this framework has built in difficulties as, for example, determining what to do when two rights clash with each other. Furthermore, this philosophy is extremely difficult to apply. It seems to require from governments not only a full-time effort, but a degree of character and enlightenment, elements that are not always present in government. Yet in the main, it has been the most successful political philosophy in history.

The Meech Lake accord unforgivingly betrays Canada's commitment to this tradition. Clause 2(1)(b), subsection 2(4) and section 16 of the would-be act tell the story. Clause 2(1)(b) says that Quebec, without qualification, constitutes a distinct society. It does not say that while Quebec is a distinct society, like all the other provinces, it is required to protect the human rights of its citizens; nor does it intend to say this, as section 16 and subsection 2(4) make clear.

Section 16 says that Quebec's being distinct does not affect sections of former charters dealing with multicultural and aboriginal rights. Subsection 2(4) says Quebec's distinctiveness does not take away any of the powers of the governments of Canada. It could have said that Quebec's distinctiveness must not affect Canada's Charter of Rights as a whole, but it did not say this. Applying the legal rule, *inclusio unius est exclusio alterius*, as well as common sense, section 16 and subsection 2(4) imply that all the other rights and freedoms not mentioned are affected by the obligation to promote Quebec's distinctiveness.

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The very concept of human rights, however, precludes distinctive interpretations, including distinctions based on territory. To say that human rights must be interpreted according to the borders within which one lives is just a trick of language. The concept of human rights by definition transcends borders. Either everyone has them or does not.

If the Meech Lake accord is accepted, Canada will sink morally to the level of many countries in the Third World and behind the Iron Curtain that pay only lipservice to human rights. Under the accord, for example, freedom of speech is limited by the recognition that Quebec is a distinct society. A government, under Meech Lake, could restrict even a submission like this on the grounds that it is doing so to preserve Quebec's distinct society. Women's equality as well as all other rights are likewise limited by the duty to promote Quebec's distinctiveness.

But even more disturbing than this is the implication in section 2 of Meech Lake that human rights are no longer a fundamental characteristic of Canada, but now just one consideration among many in our Constitution, and that they have to compete with the countless other provisions in our Constitution. They will no longer be at the top of the hierarchy of values in Canada. I think it is fair to say a country that does not place human rights at the top of its hierarchy of values has no human rights at all. That is the way the concept of human rights works.

In short, the Meech Lake accord betrays Canada's commitment to the values in the classical liberal human rights theory. The Meech Lake accord for this reason alone should be rejected by the Ontario government. I appeal to Ontario to stand up for Canada's integrity.

My second thesis is that the Meech Lake accord destroys Canada's identity as a bilingual, multicultural country. In Meech Lake, multicultural and aboriginal rights are protected to some extent by section 16. If section 2 clearly does not recognize the existence of many cultures and aboriginal peoples as a fundamental characteristic of Canada, therefore, under the Meech Lake accord, the existence of many cultures, including the existence of the aboriginal peoples, is no longer a part of the essence of Canada's image.

The notion of Canada as a bilingual country fares even worse. Most affected is the English minority in Quebec, which stands to lose its rights, not only because language rights along with all other human rights are no longer a fundamental characteristic of Canada, but in particular, because of Quebec's special duty to promote its distinctiveness from the rest of Canada. Furthermore, that both French-speaking and English-speaking citizens have minority language rights is no longer a fundamental characteristic of Canada.

What is fundamental to Canada now, under the Meech Lake accord, is only an obligation by governments to preserve the existence of linguistic minorities, not an obligation to protect and promote their rights. Under Meech Lake, the idea of Canada being a thoroughly integrated multicultural, bilingual country is destroyed. In its place, Canada becomes fundamentally characterized as two distinct societies, each with a territorial base and each possessing a linguistic minority group.

As Professor Stephen Scott, a well-known constitutional expert, puts it, the accord could have described Quebec as being an integral, though distinctive, part of Canada, but the accord does not describe Quebec in this way. Instead, under Meech Lake, Canada consists of two distinct societies separated by borders and of two language groups not separated by borders but whose minority rights are not a fundamental characteristic of Canada.

The Meech Lake accord sadly destroys what is a noble, coherent and widely accepted vision of Canada. Under the vision of Canada as a multicultural, bilingual country, Canada's rich diversity of cultures is considered as one of its defining characteristics. Likewise, this vision of Canada as a bilingual nation has built into it the goal of making all of Canada, from sea to sea, a place where either a French-speaking or English-speaking Canadian could feel at home. Under this vision of Canada as a multicultural, bilingual Canada, harmony among diversity is the built-in goal.

The Premier should reject the Meech Lake accord if he believes that Canada's true identity consists in its being a multicultural, bilingual country unified by a common Charter of Rights for all. By signing the accord, he will be destroying this concept and replacing it with a concept of Canada that values distinctiveness over harmony and exclusion over inclusion.

My third and final thesis is that the Meech Lake accord sets into the Constitution structures that are divisive and destructive of Canada's nationhood. The Meech Lake accord will split Canada apart in two ways: first, by its pushing Quebec into a de facto, if not real, separation from the rest of Canada and, second, by the destructive and weakening effects brought about by the radical decentralization that is permanently entrenched in the Constitution.

The Meech Lake accord will drive Quebec into isolation and separation from the rest of Canada due to its proclamation that Quebec's prime obligation is to preserve and promote its distinctiveness as a society. The accord's logic, so to speak, holds Quebec towards self-involvement and away from the affairs of Canada as a whole.

For one thing, there will be little incentive after Meech Lake for a Quebecer with leadership ability to involve herself or himself with federal politics, for Quebec's policies on such things as language, social policy, communications and economic policy will now mostly be made in Quebec as a result of its distinctive status.

Furthermore, federal members of Parliament from Quebec will find themselves in a constant conflict of interest. Should they focus on policy for the rest of Canada, thus ignoring their distinctive society, or should they focus on their own society, thus ignoring the rest of Canada? Thus, under Meech Lake, there will be little incentive for Quebec's leaders to become involved with Canada-wide affairs.

Furthermore, as a distinct society, Quebec will surely head in the direction of building a political and legal infrastructure that is worthy of a distinct society. For example, the courts may decide that Quebec is allowed to make its own foreign policy with regard to those aspects under its control. For Quebec to be able to conduct foreign affairs will require a tremendous amount of human and political resources and energy. Under Meech Lake, the main focus of power for Quebecers will be in Quebec City, not in Ottawa. As time goes on, Quebec will become more and more isolated from national affairs.

Second, the Meech Lake accord will set into motion similar kinds of forces that drove the separatist movements in Quebec in the 1960s and 1970s. Once again, Quebecers will begin to feel like foreigners when they are outside of their special distinct society. The federal government will be like a foreign government to them. Unilingualism may very well become the law of the land, even if the Supreme Court outlaws it, for now Quebec will be able to politically justify the use of the "notwithstanding" clause by citing subsection 2(b) of the accord, which obligates it to promote its distinctiveness. Thus, English will become more and more like a foreign language for Quebecers.

Furthermore, every time the Supreme Court or the federal government restricts one of Quebec's economic, social or foreign policies, Quebecers will feel under the thumb of a foreign, alien government. As the years go by, separatism will appear to Quebec as an even more attractive option than it appeared in 1976, for after Meech Lake has been in effect for a while, Quebec will have already achieved so much autonomy that total separation will not seem like such a risky leap into the dark as it did in 1976 but rather as the next logical step.

The second way that the Meech Lake accord will be destructive to Canada's nationhood consists in the economic philosophy that is built into the spending power amendment. That philosophy contains a definite bias against the creation of new national shared-cost programs; yet such programs, such as Canada's medicare program, have in the past proved to be among Canada's finest and most precious achievements. Furthermore, such programs are a kind of glue that binds Canadians together.

There is also a bias against central economic planning in the accord. Perhaps many of the premiers who signed the accord do not believe that federal economic planning is what Canada needs at the moment, and I respect their views. In Meech Lake, however, the premiers have entrenched their bias towards a conservative, market-driven economy permanently into the Constitution. I am persuaded by the many economists who have argued that such entrenchment guts Canada of its economic backbone, leaving us highly vulnerable to sometimes irrational economic forces.

These economists argue that Canada, being a sparsely populated and highly fragmented society, needs at times strong economic leadership from the federal government to survive and compete with countries much more powerful than us. Furthermore, economic excellence may at times require strong economic leadership in partnership with the private sector on a Canadian-wide level;

yet the kind of flexibility that federal economic leadership requires has been permanently diminished by Meech Lake. Furthermore, under Meech Lake, Canada's economic policies will more and more tend towards being no more than the sum of the 10 provinces' particular economic policies; yet the provinces often disagree with each other, leaving Canada at the mercy of conflicting priorities. This is a recipe for weakness and mediocrity.

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Because of the accord's permanent decentralizing logic, Canada's national sense of itself will diminish year after year. Given the unanimity requirement of the amending formula, there is no guarantee at all that Canada could stop the flow of economic and political power away from the federal government. In such a demoralized state, with less and less economic and political power, the federal government may not be able to maintain anything like a Canadian spirit. Under such circumstances, even English Canada will be vulnerable to a breakup caused by the divisions among the provinces.

Such then are the destructive forces the Meech Lake accord will set into effect. In conclusion, the Meech Lake accord should be rejected because it betrays Canada's highest values, destroys Canada's identity as a bilingual, multicultural country and sets into the Constitution political and economic forces that are divisive and destructive to Canada's nationhood. I appeal to the intelligence and conscience of the Ontario government to exercise the power it has to reject the Meech Lake accord and thereby stand up for Canada.

Mr. Chairman: Thank you very much. That was a very clear presentation, one that I think sets out your themes succinctly and also with some feeling. We appreciate that. I will now move to questions and we will start with Miss Roberts.

Miss Roberts: Thank you very much, Professor Hudecki. It was very helpful. I cannot believe this is the end of our third week and there is even a new approach.

The one thing you mentioned that startled me was the problem the people in Quebec might be having towards federal politics and the concern you have with respect to that. Is it completely based on your premise that the divisiveness that is built into the accord will promote this?

Dr. Hudecki: That is right.

Miss Roberts: Can you outline in more detail what you consider to be the particular divisiveness? Is it everything in the accord? I think you mentioned just about every section, although you did not say anything about the Senate and the judges. Does that also promote this?

Dr. Hudecki: That promotes the flow of power away from the federal government, but I did not stress that because I have problems with the status quo. I am not inclined to defend the status quo, the way in which just the Prime Minister appoints the Senate and the Supreme Court. That is so problematic.

The point I wanted to make about Quebec politics was that there is a conflict of interest. Suppose somebody was a minister in the federal cabinet. Would even English Canadians be that interested in that person, knowing he had a different obligation to the province of Quebec than to the rest of Canada? The person would always have his eyes going in two opposite directions.

Suppose there is a Minister of Communications. It seems to me Quebec is almost always going to have a very different policy from the federal policy because its duty is to promote its distinctiveness. He is going to have to play two roles all the time and may not be trusted by either group completely because there are different constituencies. You would wonder what their goal is of being in politics.

Miss Roberts: You basically think it is going to be a very great social change in the way the people in Quebec might view themselves.

Dr. Hudecki: That is right.

Miss Roberts: Or be allowed to view themselves.

Dr. Hudecki: You are understanding what I said perfectly.

Miss Roberts: One thing we are considering is the process, how we got here to begin with, and then what is going to happen whether Meech Lake passes or not. I assume you agree that the Constitution Act, 1982, is not perfect.

Dr. Hudecki: That is right.

Miss Roberts: There is going to have to be an amendment or some changes somewhere down the road; something will have to be done. How would you suggest the process be changed to reflect the concerns we have been hearing? Have you thought about that?

Dr. Hudecki: Yes. I do not have any hope for this Meech Lake accord as it is laid out since section 2 twists the shape of Canada into a weird one. It is just structurally so awful that I do not see how it could be fixed up. Maybe if you put the Charter of Rights and a whole bunch of things into the first section and really define Canada properly, there might be hope for it. All the amendments, all six of them, so hang together that it is a clear intention by the premiers to go in one way, and I am just against it. I think it is disastrous. I do not have that much hope for it other than to say no and start over again.

If this is what Premier Bourassa is demanding, if I were the federal government, I would have to say--it is just like with a family: if a kid says, "I will come home but I am going to make my own rules," the parents are going to say: "No, I am sorry. Then you will have to stay out as a runaway child." That is really that.

You are right that the 1982 accord did not get Quebec in and Canada is in trouble. But this is an overreaction to Canada's trouble, so I would just do nothing right now and see what happens. There is going to be more chaos caused by this, by Ontario and the other provinces accepting it than if they said no. They could appeal to Canada's moral integrity on human rights and say no and it would not be seen by Quebec as a slap in the face.

Miss Roberts: But I am talking about the distinct process. We have heard much testimony that indicates that 11 men should not be the only people who see what is going on in the process. Do you have any help for us with respect to that particular process? Do we send 11 men back into the same room and say, "Go back at it"? I am afraid it might be the same 11 if we do it in a hurry. How are we going to deal with that?

Dr. Hudecki: I do not know the answer. I would love to read what your report says. That is how the 1982 accord ended up being written and that process is flawed. It just seems all wrong. I do not know; I am sorry.

Miss Roberts: But we should still be looking for something to change that.

Dr. Hudecki: That is right; just do not say yes to something that compromises Canada's integrity.

Mr. Breaugh: One of the difficulties many of us have with this is that, unlike previous attempts to alter the Constitution of Canada, this one is particularly mired in a lot of secrecy. We do not even have any second-hand reports of what were the intentions of these people, what were the tradeoffs that were made and what was the general direction in which people tried to take this agreement. Part of the difficulty in trying to analyse what the ramifications of this are is that we do not have any background and it is tough to put it into a context. I think the process that got us to this point is one that is going to cause us immense pain after this.

We have gone through the exact provisions in a meticulous way with a number of groups now. My reading of it would say that if we could determine, for example, that the Charter of Rights has not been infringed by this agreement, we would alleviate a great many concerns by a number of people in the country. It is not clear, to be charitable, whether that is true or not and it will not be clear until a court decides.

I, for one, do not share the great pessimism that you do. I have a tendency to think that no matter how badly these 11 people screwed it up, there are a few million other Canadians who will unscrew it for them. I would have to take the almost draconian view of Quebec's intentions to get it to the point you are at. I admit that is possible, but I do not think it is likely.

The reason I am being a little apprehensive is that I would really like to know what was said by each of the premiers and by the Prime Minister as they arrived at this accord. That would make an immense amount of difference in how I view the document itself.

The danger I see in this process is that if you are left to struggle with the interpretation of the exact words, whether something is in the interpretative section or in a rights section, if you are left to struggle with the words themselves, the best you can do is second-guess a Supreme Court decision before it happens. The truth is that no one knows what is going to happen from that.

In your opinion, would it alter your vision of it if we were able to establish that the Charter of Rights had not been infringed by this agreement?

1030

Dr. Hudecki: Only to some extent. Just to go back a little to what you said, I do not see how the most important issue is the premiers' intentions or what went on in the back room, because I think what is the most important is what is written. In 25 years, that is what the Supreme Court will be looking at.

I cannot imagine a court case contesting the whole Charter of Rights. What would you say to this, what if the Supreme Court said, "No, they are not

affected, but we still have a Constitution where they are not considered to be a fundamental characteristic of Canada"? I would still be afraid that in 20 years the next Supreme Court, when it changes, is going to bring them down to a secondary status; where they really are in the Constitution, they are of secondary status.

What if this Supreme Court, so used to our past way of looking at Canada, just sort of overlooked the words? The words there are pretty devastating. You seem to be happy with one court decision that would contradict what I think are the words. You say, "That would satisfy me," but I am still worried about the words in the Constitution.

I would ask you one more question. What about the symbolic effect of a Constitution? Does it not lay out Canada's priorities? Should it not do it and not some court case? This lays out Canada's priorities and everything I have ever thought of Canada as being great is down the tubes by this Constitution. It is divisive. It builds walls. It excludes.

Are you not worried about the spirit of the Constitution?

Mr. Breaugh: Let me tell you the problem I have and I think it is one that you are having too. It is difficult to view this accord as part of Canada's Constitution, which is precisely what it is. The Constitution was not the old one thrown out and a new one brought in. This is an amendment to an existing document. We are struggling with how it fits and that is kind of the critical factor in here.

If, for example, I am assured that the Charter of Rights stands clear, unimpacted by this agreement, then I view the agreement in a different light totally than many people would. For example, the basic concern of a number of the witnesses who came before the committee is that they have lost ground in this round of negotiations and to what extent we will not know until the Supreme Court makes probably several decisions over a number of years. It is really tough to estimate the damage that might have happened by this agreement. It may be nothing. We do not know that yet.

For example, in looking at the concept of a distinct society, it may be that 20 years from now we look at this and say, "It had virtually no practical impact on anyone in Canada, but it made people in Quebec feel better." There are those who hold that point of view. If the courts make that stand up, we look at this in a totally different light than, for example, you did this morning.

The reason I need to know the intentions are important for a number of people in Canada, particularly in the north, the Yukon and the Northwest Territories. They are in a quandary as to just why they were so steadfastly excluded from even any discussion of this agreement. If that were done essentially because the premiers could not figure out a way to work them into the process and it was simply that, I do not feel that badly about it. We can find a way to work them into the process frankly.

Dr. Hudecki: How?

Mr. Breaugh: Very simply. For example, it could be as simple as this: the Northwest Territories and the Yukon have never had a vote on constitutional matters, they have always had a voice. Their argument basically is they have lost their status at the bargaining table. It could be as simple as the Prime Minister of Canada, the next time they knock on the door and say,

"Can we come in to hear what you are saying and discuss with you what you are saying?" if he says yes the next time instead of no as he did at Meech Lake, their problems and their status are essentially re-established.

What changes, of course, is the process whereby other provinces are brought in. But in testimony before this committee, both of them frankly admit they are not talking about provincial status this week or next week or in the foreseeable future, so you have some time to work out an agreement whereby they would be brought in.

Dr. Hudecki: I am more pessimistic about what happens in 30 or 40 years when they do want to become provinces. What guarantee is there and why even take the chance?

Mr. Breaugh: I would say they would have the exact same guarantee that Ontario had when it became a province. There was no guarantee of provincehood for a place called Ontario. There was no place called Ontario. It had a population and a geography that is not dissimilar from the northern extremities of the country now. As a matter of fact, at that time it was considered to be the northern extremity of Canada.

There are theoretical problems that I have with this. I think what most of us are trying to do is get some kind of a grasp on the real practical problems that are posed by this. Most of us are practising politicians. We are not bedevilled by words. We know that no matter what an agreement might say, if 11 people with good intentions sit down next week and say, "We did not mean to create this problem, but there is a problem. Let us rewrite the law," they can do that. We know that if the premiers and the Prime Minister are convinced by the work of this committee that a mistake was made, they can, in fact, sit down and rewrite it. That is possible and it has happened.

I think part of our job is to determine what is a real, practical difficulty with this agreement, where the difficulties are there, and to make the case that this is worthy of the first ministers of the country reconsidering. That is what we have to do. I do not think we can afford to engage in the theoretical. That is your job. That is not my job. My job is to establish where is there a real, practical problem that has to be fixed and it is bad enough and it is clear enough that we know how to fix it.

Dr. Hudecki: I am just asking now, I am not making a point. Do you think the sections 2 and 16 together constitute a mistake regarding the status of the Charter of Rights and Freedoms? In other words it said only the things regarding multicultural and aboriginal peoples are not affected and did not mention any of the other ones. I am just asking the whole committee, do you think that constitutes a mistake?

Mr. Breaugh: From my point of view, it is not a serious error if we establish the primacy of the Charter of Rights. If we are unable to do that in some form, then I think the potential is certainly there for very serious problems to come in the future. For me, as one person on the committee, if I am able in some fashion to establish that the charter is supreme over anything that is in this agreement, my problems diminish substantively.

If I am unable to do that, then the questions that have been raised by a number of groups over those two sections and other sections become much more real and I for one would be unwilling to let that go to some kind of a great crap shoot in the Supreme Court. I want some better assurance than I now have that what Mulroney has said and what many of the premiers have said is true,

that the charter remains supreme to anything that is in this accord. If we can establish that, then I look at it in a whole different light.

Mr. Elliot: This is really a supplementary, as things have evolved, to what we have just been discussing. We are just finishing up the third week of hearings now and in the first week, essentially, we had presented to us a lot of very expert advice with respect to the detail of the wording and that kind of thing in the accord that we are perusing. We have now had two weeks of hearings with people such as yourself coming before us with very divergent views with respect to their interpretation of the thing.

In what we are trying to do, I think your type of presentation is very beneficial because in my mind, relative to some things we heard yesterday, it gives us a real choice with respect to what we may or may not do. You clearly say that the accord should be rejected. The other two alternatives are that we accept it or it be amended.

What is coming through loud and clear to us is that there is a realization by a lot of people now that we have a Constitution of our own, we have a charter of our own, this is an attempt to amend the Constitution and it is very important that all of the three documents be read together in the realization that our Supreme Court seems to be going to have a greater role in interpreting the wording and that kind of thing.

The kind of thing that we were presented with yesterday by the Alliance Québec, the English-speaking Quebecers, is sort of opposite to the kind of intent that you are expressing today, because they very definitely see a lot of merit in the accord from their point of view and are very optimistic about the fact that they, within the border of Quebec, can reconcile their differences with the French-speaking majority. So when someone like yourself presents the arguments that you just presented from a theoretical point of view and says, "Reject it and start over," this leaves me, as a committee member, in a real quandry.

1040

Dr. Hudecki: Are you saying that they think their English minority rights have been protected in Meech Lake?

Mr. Elliot: Not really that clearly. What they say is--

Dr. Hudecki: I find that just incredible. They probably got hit the hardest of anybody. I think rights in general, including language rights, as I said in my paper, are not there at all if they are not at the top; I think everyone sort of loses his rights, including language rights. But in Quebec there are two reasons why they lose them, because of the Quebec government's special obligation to promote its distinctiveness. So I find that incredible if somebody is saying, "We love this," and people defending English--

Mr. Chairman: I think theirs was a fairly long and involved brief, and we want to be careful, since they are not here, in attributing too much to them. But their point was that as English-speaking Quebecers they have problems with the accord but are seeking changes and amendments to it. This is all on Hansard; you might at some point want to look at it. I do not think anyone is suggesting he feels it is the greatest thing since sliced bread.

Mr. Elliot: That is the kind of comment I would have made, too. They never really said they loved the present accord, because there are some

serious concerns with respect to it. But the flavour of the discussion, as I recall it, was a very optimistic, upbeat kind of approach to the whole problem with an idea that there could be a resolution there.

The one thing this committee seems to be accomplishing that has not been done is the fact that it is coming through very loud and clear that the kind of 11-person meeting that developed this accord is no longer satisfactory in Canada. If the consultation in advance of that kind of meeting does not take place from now on, I submit, the decisions made by such a meeting will not be adhered to by the people whom those premiers and the Prime Minister represent.

Now, what I would like you to do, if you would, is to sort of reconcile in my mind for me the difference between that upbeat, optimistic kind of evolutionary concept and yours, which is to reject it completely and start over again, because I am having real difficulty with that.

Dr. Hudecki: Yes. Well, in fact, I am very sympathetic to everything you just said now. If I thought the premiers, or whatever the new process was, if I thought we could do it again, I could work with this. I would just want section 2 redone properly, because I find it is talking about fundamental characteristics of Canada and I care about how Canada is defined.

If we could work on that, I could be upbeat about Meech Lake. I guess I have just been hearing so many times that if even one comma is changed, then the thing is over. That is why I say you have to say no. But if someone said, "No, that is not true; it can be changed," then I would be happy. I would go to work on section 2.

Mr. Eves: To follow up Mr. Elliot's line of questioning, I believe that one of the recommendations the alliance made to us yesterday was that they were disturbed by the fact that in subsection 2(3) it says that the government of Quebec is "to preserve and promote," whereas in subsection 2(2) the government of Canada and other Legislatures are only to preserve, and not to promote.

Dr. Hudecki: Right.

Mr. Eves: That was one problem they definitely had as an English minority in Quebec.

Along the lines of the questioning Mr. Breaugh had, you asked him a question about sections 2 and 16 read together. Quite frankly, most of the presentations we have heard before this committee deal, I would say, with those two sections read together and what does it really mean and is it clear or is it not clear? We have had constitutional experts on both sides. Some tell us it is clear; some tell us no, they think there is some ambiguity there and a court in the future might disturb some of the rights or freedoms outlined in the Charter of Rights and Freedoms and could possibly be interpreted that way.

But I take it that what you are saying is that even if those problems could be resolved--if, say, section 16 were worded so that it left no doubt that every right and freedom granted under the charter had primacy or superseded the accord--would you be happy with that, or are you saying that you think section 2 is so greatly flawed that you almost want to rewrite it?

Dr. Hudecki: Yes. I would rather go the route of mentioning the charter in section 2 as a whole; I would prefer that. Your way would help. I

would be happier if even in section 16 it said the whole Charter of Rights is not affected.

I guess we are probably coming to a close now, and Mr. ?? said that we are politicians, and do not get too caught up in the hokus-pokus of words; try to figure out what is really happening. But I warn everybody to pay attention to words: Pay attention because they may last 50 years. I really think you should pay attention to the words and to the spirit of this. You see, just as a Canadian, do you not worry about the way this is defining Canada as two distinct societies based on territory? Does that not rub you the wrong way?

Mr. Eves: For my part, I certainly see the point the alliance made yesterday. The wording is definitely different in subsection 2(2) from subsection 2(3), and I think that creates a problem in itself.

Mr. Chairman: Professor Hudecki, I think you have done one thing today which has not happened, and that is that you have probably posed more questions back to us that we are grappling with and are going to have to reflect upon, and for that we thank you.

When we started this exercise, we were named to this committee late in the fall, but, as has been noted, our hearings began at the beginning of this month. There are a lot of questions that we had at that time. I suppose we thought perhaps by this point maybe we would have answered those. While we may have answered some of them, we have probably tripled or quadrupled other questions that are now sitting in front of us, and I think you have quite rightly put your finger on a number of them. By the end of this exercise, whenever we make our report some months hence, it is possible that our answers to those questions may be different, but I think you are quite right in insisting that we think about those. I think we do have to come up with answers to those in our own minds.

We thank you very much for taking the time to prepare your presentation and appear before us this morning. We are all indebted to you.

Dr. Hudecki: I feel it is mutual. I am indebted to you just for existing, and again for coming to London. Thank you for hearing me out.

Mr. Chairman: I will permit everyone 30 seconds to go to the end of the hall for a cup of coffee. As people are doing that, I would like to invite the representatives of the London Women Teachers' Association--the president, Carla Pieterston, and the vice-president, Barbara Hoover--to come forward. Please feel free to get some coffee as well.

The committee recessed at 10:49 a.m.

1050

Mr. Chairman: We will begin again if everybody has a shot of caffeine, soda water or whatever.

May I, first, thank you very much for coming today. I know that you have been both an afternoon and a morning witness, and we thank you for being able to come this morning to fill a spot which became open. I will simply turn the microphone over to you to make your presentation, after which we will follow up with questions.

THE LONDON WOMEN TEACHERS' ASSOCIATION

Ms. Pieterston: First, I would like to welcome you to London and thank you for coming. I thank you also for the opportunity to come and express our views. I am this year's president of the London Women Teachers' Association and, as such, I represent the 900 women elementary teachers in the London public education system. We are the people who spend our days working and learning with kids and also communicating with parents. Our daily endeavours are, I feel, very important ones. It is our job to try to instil in kids a love of learning and a delight in discovering. It is our job to try to develop in children a sense of self-worth and at the same time teach basic skills. These endeavours keep us rather busy.

We are teachers and we are not constitutional experts. However, we did feel compelled to come to speak on the Meech Lake accord because as part of our Constitution, it is going to be the beams and the girders upon which our society is built. That, I think, makes it a very profound and a very important document.

First, I want to say that we are very committed to a united Canada and we are very pleased that Quebec is going to become a full partner in the constitutional process. However, there are sections of the accord that we feel are ambiguous and unclear. We feel that before the provisions of the accord become law these ambiguities need to be clarified.

I realize that there is a lot of concern about the accord in a lot of different areas. There are two in particular that we would like to address, namely, the equality rights for women and also the provinces' options to not participate in national shared-cost programs.

We feel very strongly that the equality rights of women that were won in 1982 are at risk. The Charter of Rights and Freedoms entrenches the rights of all Canadians. Clause 28 was added to the charter to ensure that all rights be given equally to male and female persons. This clause was very specifically added to the charter to guarantee a legal basis for the protection of women's rights.

The accord expressly protects native and aboriginal concerns in clause 16; it does not mention women's rights. Prime Minister Mulroney has stated publicly that it was not his intention to override the charter in these matters. However, in the future the courts are going to be guided in their decisions by what is written and not written down in the Constitution. Since some rights were definitely included and others not, the courts could well decide that the exclusion of women's rights was intentional. We have fought too long and hard for our rights to leave them up to somebody's interpretation of what somebody in 1987 might have intended but did not remember to write down.

These ambiguities concerning women's right have to be clarified. Perhaps a simple way of doing that is simply to delete section 16 from the accord altogether and replace it with a provision that states that the charter prevails over the accord in these matters.

Second, it is our understanding that the provisions of the Meech Lake accord allow provincial governments to opt out or to choose not to participate in national shared-cost programs. Each province has the right to not join in such programs if it has schemes that are compatible with the national objectives. The province is also then entitled to reasonable compensation from the federal government.

The vagueness of these terms, I feel, could lead to endless wranglings as governments try to define what is compatible, what are national objectives and what is reasonable compensation. As they sit there and argue and disagree, the programs could be shelved indefinitely.

We are also concerned about opting out because we feel it puts into jeopardy the fundamental principles on which Canadian society is built, namely, the universality and accessibility of social programs. Allowing provinces to opt out of new initiatives can have a profound effect, particularly on women and, of course, children. Schemes such as a national child care policy, maintenance orders and a national dental plan must be universal and must be comprehensive. Amendments to the Meech Lake accord need to be made so the federal government is able to maintain equal services to all its citizens.

As I have said, we are committed to a united Canada, based on principles of equality and equal access for all citizens. We feel it is imperative that the accord reaffirm these principles very precisely and very clearly, and we feel the amendments need to be made before the charter becomes part of the constitutional framework.

Mr. Chairman: Thank you very much. It was very clear and specific. I think, as you are undoubtedly aware, a number of groups and organizations, indeed, Mr. Breaugh mentioned it earlier--have addressed those points, particularly the equality ones, but the repetition does not hurt.

Ms. Pieterston: We find in schools that helps too.

Mr. Chairman: That is right. We will turn to questions from Mr. Eves, Mr. Cordiano and Mr. Breaugh.

Mr. Eves: The chairman is quite right; a number of groups have raised these very important issues with the committee. You have heard the question that I asked of the previous witness. I quite concur that section 16 needs to be clarified. If that is what everybody means, why does everybody not say so in some very simple, all-encompassing language? Otherwise, I think it is at least possible that a court could read something into the fact that two groups are mentioned in section 16 but nobody else's rights are mentioned. I fully understand and concur with your position on that matter.

With respect to the opting out provisions, however, we have been told, by at least one witness that I can recall, previously in hearings that the original wording for this section was not "national objectives," but "national standards," and was changed to objectives at the insistence of one or more of the provinces. Would you be happier, shall I say, if the word "standards" was to be used in that section as opposed to "objectives?" At least, that would be some method of the federal government demanding something of each of the provinces.

Ms. Pieterston: Yes, I would be happier with the word "standards."

Mr. Eves: But you are still uncomfortable with the opting out process?

Ms. Pieterston: Yes. I feel, just as Dr. Hudecki said, one of the marvellous things about Canada is that there is this universality; we are very diverse nation, but there are certain things that every Canadian can expect. Our social programs are our fundamental in that. I feel it is very important

that we keep that. That has to be part of the basis of our society, that social programs are equally accessed by everyone. "Standards" would help instead of "objectives."

Mr. Eves: The argument that is made by many people on the other side of that coin is that provincial governments are more aware of the needs of their residents and although there is a national program or standards in place, perhaps they need to be tailor-made to suit the residents of certain individual provinces.

What is your comment on that?

Ms. Pieterston: You can tailor-make something, but if you tailor-make something too much, you have destroyed the essence of it. It is the same thing--I have to always bring it back to a school system--you can have 65 different schools all committed to the education of children but you need some sort of central philosophy and central focus from which they all have to work; so, yes, provinces do have to tailor-make their programs but the thrust has to come from a national focus.

Mr. Eves: Thank you.

1100

Mr. Cordiano: I too would like to thank you for coming before our committee. It takes a lot of effort for any group to come before a committee of the Legislature to talk about matters that pertain to the Constitution. They are somewhat esoteric, and most people have not really delved into the subject matter, although we would like to promote that. In fact, I am one of those people who believes that the more people there are who know about their Constitution, the better off we will be as Canadians and as a country, although I do not know how realistically we can accomplish that. It does take a number of resources to be able to come before committees, and yours is one of the groups that can do that. Perhaps there are others that cannot.

I want to get into the subject that you have dealt with and continue along the lines that my colleague Mr. Eves was speaking to you on, and that is with respect to shared-cost programs, spending provisions in the Constitution.

The only point I want to make is about the difficulty I am having with this section, as a member looking at it. In one paragraph, you say, "The vagueness in these provisions might lead to endless delays as governments haggle over the definitions of 'compatible,' 'national objectives' and 'reasonable compensation'." You go on to say that if the federal and provincial governments are haggling over the definition and meaning of certain phrases, such as "national objectives," then programs could be put in jeopardy and on the shelf.

I look at the whole debate over extra billing and I think we could use that as something of an example in this direction, because you had a situation where you could describe the ban on extra billing, or a national health care program that did not include extra billing, as a national objective. Certainly, the federal government made that claim. I do not see how that would be too difficult to arrive at in terms of clear and precise language, where you would point out that a national objective is to have a program, such as we do in Canada, that does not include extra billing; that is, it is universal, accessible and affordable.

The same could be said for a child care program across the country. That is a national objective. We want to have a national child care program, which is universal, accessible and affordable. If there is the government will to do it, then certainly it will be accomplished. I do not care if the word is "objectives" or "standards," but I think if the will is there and if the government is determined to point out what the demands of the program are and what the needs to be met are, and these are the objectives which will reach right across the land, then certainly that can be accomplished.

Ms. Pieterston: Suppose the federal government says: "We believe very strongly in a national child care policy. We would like all provinces to implement one, and that is the national objective."

Mr. Cordiano: Then you have a feeble government. I mean that is the program that the government would put forward.

I am not trying to answer this for you, because you would have to put that question to the federal government in place now, but if there is no will to have a national program that has certain objectives, then we could have different standards for different things; but it is difficult to tailor those to national standards, what the needs are in northern Ontario and what the needs are in various regions of the country. If you have national objectives, then you have to meet certain goals. That is what programs right across the country should be doing. That is what I think we have in terms of our medicare program.

Ms. Pieterston: I agree with you in terms of medicare. Medicare is already in and medicare is great. I think it is wonderful, but there is no guaranteeing that the federal government is going to say: "We want a child care program. These are the specifications we want and we demand that every province meet those," Probably you would get a lot less flak if you say, "We would just like a national child care policy." Again, it is leaving it very vague. It is very fuzzy. Objectives can be as specific or as unspecific as you wish them to be. Standards, on the other hand, spell out much more clearly.

Mr. Cordiano: It is your opinion that the federal government--let us put it this way--is the one government that can accomplish this on its own. If the federal government is not the preserve of those kinds of objectives--I do not want to use that term--or national goals, then we are not going to have that kind of program.

Ms. Pieterston: No. I think there are many provincial programs that are excellent. We in Ontario could have a superb program in child care, but I think the people in Newfoundland should also have a superb program in child care. I think we need some sort of national focus or we are going to end up with little pockets everywhere; some pockets that are very good and very progressive and other pockets, due to financial constraints and isolation, that are not. I am not saying that everything needs to come from the federal government. I think we are a very decentralized country, but in terms of social programs, yes, there needs to be a national focus.

Mr. Cordiano: You do not believe that the section which deals with national objectives will be enough to set a national focus?

Ms. Pieterston: No. Again, it is very vague. We can write objectives till the cows come home.

Mr. Cordiano: Yes.

Mr. Breaugh: I want to kind of agree with you on one thing and disagree with you on another. My concerns around the Charter of Rights and provisions can be met in a number of ways. We can refer the matter to the Supreme Court of Canada and get a court decision. That is one route. We can amend this document and see if we can put the words together in a better order. We can simply delete certain sections of this provision and let the charter stand.

As a committee, we have at least three options and probably more. I really do not care which one gets used so long as the supremacy of the charter, and particularly the equality rights sections, are clearly supreme and unimpacted by this accord. I take it you take much the same position?

Ms. Pieterston: Yes.

Mr. Breaugh: Whatever vehicle is used, as long as we clearly establish the supremacy of the Charter of Rights, we do not care about Meech Lake in that regard.

The other area where I would tend to disagree a bit is on the shared-cost programs and mostly because that is the way we do it in Canada. There is hardly anything that anyone can think of, done by any level of government, that is not shared by three or more levels of government, from building roads to schools, to hospitals, to national programs.

Medicare is a program that came out the poorest province in Canada and became something that is applied in at least 10 different ways, but we have a national program at work, which we understand. It is applied to different standards and different objectives in different ways in each of the provinces. Within the provinces, we should not forget, it is applied in different ways. You cannot argue that if you live south of Bloor Street in Toronto, your medical care is exactly the same as if you live in Espanola. It is not.

We try very hard to see that standards are set and people have equal access, but the truth is, it is applied in different ways because it has to be. So are our schools. There are some kids who walk five minutes to some of the finest educational institutions in the world and there are some who get up at 6:30 in the morning and ride a bus for two hours to get there.

Try as we might, whenever we go at this, we basically use the premise that the Canadian way to do this is a shared-cost process. We establish where we can criteria, standards, objectives, whatever words you want to use, and then we try to meet those. I am not as concerned about that part of this as many people would be. I think we are fairly successful at that because of the multitude of ways in which we have done it. There is a national police force in Canada, the Royal Canadian Mounted Police. Ontario did not opt to use that as our provincial police force. We have the Ontario Provincial Police. I have not heard anyone make an argument that the OPP is not as good at provincial policing as the RCMP is in British Columbia. I think that is known territory. That is the basic argument I am making. I am not as afraid of that as I am of some other sections.

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If I get the charter stuff done, if I establish that my rights as a citizen of British Columbia are the same in terms of medical care as the rights of an Ontario citizen and I can make that argument, then I am not concerned that BC runs its own medical plan as much as I would be without the

equality rights sections being in there. I can go to court and make an argument in front of a judge that I do not think Ontario does as good a job at providing child care as some other province. That is known territory. That is the Canadian way of doing things and we do it to different standards in almost everything I can think of. Part of the process in Canadian politics is to see how we take a national program like education and apply that in different jurisdictions.

Nobody has the fallacy that the educational system in the territories is the same as it is in southern Ontario. It is done in a different way. We try to meet those needs in different ways. We are into new technology. So I do not share the angst that you have about the shared-cost programs or the opting-out provisions under those, simply because the track record in Canada is very much there. I tend to agree with those who have said to this committee that that is really no change. That is the way we do things in Canada. If there is a change, we have now written it down where we used to just negotiate our way through it. I would be interested in your observations on that.

Ms. Pieterston: It is interesting; the programs you have mentioned are the programs that are already in place.

Mr. Breaugh: Yes.

Ms. Pieterston: And I agree, we do a good job at them, and I agree with you, educational facilities in the Northwest Territories are probably not what they are in Toronto. Health services are different because sections of the country are very different. I still find the terms vague, and what concerns me is the vagueness.

I am sure the intent was not to destroy social programs that we have. "Ah ha, now we are going to set it up so that different regions have different social services," but we still have to go by what is written down. You and I can agree in our intent and how we envision Canada, but that is not worth anything. What is important is what is written down. I think it could be solved by changing the vocabulary that is being used, and words, as Mr. Hudecki said, are very important because that is all that people are going to have to work on in a few years.

We can feel very strong and very secure with the programs we have in place, but we do not know what is coming in the future, and I would hate to see problems over vagueness and wording.

Mr. Breaugh: I guess the difference is simply this: I bought this suit at a store in Oshawa where I buy all my suits. I go into that store now and I know Murray Johnston's staff. I know the quality of goods they have. I know where they get their goods made. I know they are union-made. I know they are going to cost me a good buck but they will last me a long time. When I walk into that store, it is known territory. I do not stand around reading the labels. I do not question the employees about who made a suit or whether it was made in a sweatshop in Taiwan. That is all known ground for me.

I really view these provisions of the accord in much the same way. If this were totally unfamiliar, then I would raise a lot of suspicions, as I would as a first-time buyer in any consumer market. You want to know all of these questions. You want to know the specific meaning of each word. You want to see the total sales agreement. If it is a lot of money, you will take it to a lawyer and pore over what the words are and what the escape clauses are and all of that.

In the Canadian political experience, we use the shared-cost approach to almost everything we do. It is a known entity. We argue after the fact about whether we have applied this fairly or not. That seems to me to be the critical part. As a citizen of Canada, I want to see that I am treated equally in all parts of the country, and that is the paramount thing in all of this. If I have those charter provisions in there that assure of equality, I can have the finite arguments about whether my medical care in Espanola is exactly the same as it is on Bay Street in Toronto. I know what I am dealing with here. It is familiar territory. That is the process that we used. The reason I do not have the anxiety about it is that currently there are no such provisions. We have come to this point by negotiating our way on individual packages and individual programs. We are now at the point where we do establish national policies, and in some cases national legislation like the Canada Health Act, but each of the provinces then proceeds to implement that.

I am just making the argument that I appreciate that the words are fuzzy, but as it is now, there are no words to be fuzzified, so to speak. I do not have the concerns there. I understand the point you are making, and I think it is valid, but I alleviate those concerns the moment I assure myself of equality of treatment in the charter provisions.

Ms. Pieterston: Could I just make one more point? If there are no fuzzy words or unfuzzy words at the moment written down on how these programs work, then if we are going to put them on paper, let us make sure they are not fuzzy.

Mr. Breaugh: OK.

Mr. Chairman: Before turning to Ms. Roberts, I know I expressed the view of the committee that we are delighted to know now the answer to the question of why Mr. Breaugh is always sartorially resplendent. There will undoubtedly be a run on a certain Oshawa menswear store.

Mr. Breaugh: Murray Johnston said to me, "If you mention my name, I will take off 10 per cent."

Miss Roberts: Just to carry on from what Mr. Breaugh has been saying, and from your last comment, is it more important to you to have those words in or out with respect to the shared cost? Words in are just as important as words out of the Constitution. What this might do with respect to transfer payments and opting in and out--is it more important to you that it is there or not? Have you looked at that point of it?

Ms. Pieterston: No. We were looking at it solely from the point that the words are there now.

Miss Roberts: Then my last question to you is with respect to process. You are here today and you are educators. I am going to ask you to think very carefully of what the process should be and your participation in the process. Constitution-building is a very long, drawn-out process, and basically we are just starting on the road. The 1982 Constitution is there, and there are many parts of it that are going to have to be defined, redefined, maybe changed. One comment I would like to make is that maybe 10 or 20 years ago, multiculturalism would not even have been spoken of with respect to a charter. I am concerned about putting in too many words that are going to be stopping the growth of Canada as we may see it in the future.

As educators, how can you help us in this process? Have you thought of that?

Ms. Pieterston: It is an interesting perception. I have not thought of it in terms of educators. I can only talk about my own reaction to the accord, and it seemed to me there was this mad panic to get this document put together. I did not feel that very many people knew very much about it. We just suddenly had this accord, and then once it was there, people started saying, "Hey, there are some problems with it." There were committees called in August where people could present briefs.

I do not like the way this has happened. It seems to me this is after the fact. I think maybe we should have done this a long time ago, before we had governments ratifying the accord. Hindsight is terrific. At the same time, you cannot have a process that bogs down so badly that you can never amend anything. My answer to your question is, I do not know. Somehow I feel we need to establish a process.

Miss Roberts: Thank you.

Mr. Chairman: I think we would all say as members of this committee that the question of process is an important one and that we would never want to go through this process again in this way. Clearly, whatever we put forward or whatever evolves, if not only the House of Commons and the Senate but also provincial legislatures are to review proposed amendments to the Constitution, there will have to be a process that will enable legislators not only to think and reflect and study before voting, but also to provide for organizations such as yours, and other individuals, to come forward with their points of view.

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A number of people have stated that perhaps one of the biggest problems with the accord is in fact the process. I am not saying we would necessarily have arrived at the same place had we gone through a six-month or whatever series of meetings and so on, and then followed with a signing or amendments, but the sorts of things you note I think have been noted by many as concerns: How do we really know what it all means and was it done in too much haste and so on? I think we see that as an important part of our terms of reference in being able to try to come to grips with that question.

I want to thank you both very much for joining us this morning, presenting your brief and sharing your thoughts and concerns with us.

Ms. Pieterston: Thank you very much for the opportunity.

Mr. Chairman: I would now like to call upon William Robertson, if he would please come forward. I note for the record and to the committee that Mr. Robertson presented exhibit 13 to us. He has given us another copy. There were some changes, so it now is exhibit 129. I believe everyone has a copy of it, Mr. Robertson, so if you would like to present your views, we will follow up with some questions.

WILLIAM ROBERTSON

Mr. Robertson: Thank you for the opportunity to come here and present my personal opinions on the Meech Lake agreement. I will deal with Quebec's special status, the opting-out provision, some reform to the Senate and the Supreme Court of Canada.

In my view, in the present form this masterpiece of obfuscation should keep the Canadian legal profession happily and profitably engaged for many years to come. While its honourable and laudible intention is to find some face-saving formula to allow Quebec to formally sign the Canadian Constitution, in my opinion the price to be paid can neither be justified nor accepted by those who believe in one united Canada and not a loose federation of petty fiefdoms and independent associations, all with their own special interests and objectives.

Recognition of Quebec as a distinct society where most French-speaking Canadians live: So what? Are other, mainly English-speaking provinces not just as distinct societies? What about the other areas in Canada where neither French nor English are the native languages? The only really distinctive societies in Canada are those of its original inhabitants. All the rest of us are immigrants.

Quebec's role to preserve and promote its distinct identity also includes the responsibility of protecting the rights of all its residents, not just those who are French-speaking or of French origin. It is the English-speaking section of its population whose rights have been abrogated by the infamous Bill 101. Had a similar bill been introduced elsewhere in Canada against a French-speaking minority, it would have been considered racist in intent. Bilingualism in Quebec is just, fair and equitable, but a unilingual French Quebec and an officially bilingual Canada for the rest of the country is not.

I am totally opposed to any special privileges for Quebec or for any province and also to the opting-out provisions of the Constitution. We continually harp on our distinct Canadian identity and our multicultural diversity. All Canadians are supposed to have equal rights, but in fact we spend all our efforts trying to fragment the nation into a multitude of conflicting ideologies and special interest groups.

We want free trade with the United States, but we have neither free trade nor equal access between provinces in our own country. Whether in the practice of a trade or a profession or the simple transportation of goods across the country, there are a multitude of rules, regulations and restrictions which operate like those of a collection of little principalities to the costly detriment of all Canadians.

We are all equal, but some have to be more equal than others because they speak a special language or belong to a special religion which needs special schools to preserve its unique identity. What utter nonsense. Why on earth should Quebec have special immigration rights to preserve its unique character? That could be interpreted as meaning that the existing racial balance should be maintained for ever. If entry into Quebec is to be controlled by the Quebec government, will it also want to control exit from the province?

If Quebec has the right to promote its distinct society with a francophone majority, presumably all other provinces have an equal right to promote the rights of their anglophone majorities and resist any attempts to expand the rights of their French-speaking residents or those of any other minority ethnic group. Is that what we want in Canada? Taken to its logical conclusion, in every province the existing national mix could be frozen for eternity.

What about the rights of our native peoples in the Northwest Territories, for example, where they are in the majority? Will they be allowed to control immigration to their area? Will they have a special say in promoting their unique societies? As it now stands, it would appear that the Northwest Territories will not be able to obtain provincial status without the consent of all 10 provinces and the federal government. We cannot have one united country, Canada, with equal rights for all citizens and at the same time give special rights and privileges to Quebec or any other province. Immigration must remain the responsibility of the federal government; consultation and collaboration with the provinces, by all means, but that is all.

The Supreme Court of Canada: I question the justification for at least three of the nine members being from Quebec just to be able to deal with Quebec's system of civil law. It is out of all proportion to the rights of the rest of the Canadian population. If this is still mandatory, then at least one of the three Quebec judges must be an anglophone.

New legislation now before Parliament proposes to make it compulsory for all federal court judges to be fully bilingual. This is another example of the promotion of the rights of the francophone minority over the rights of the anglophone majority. Appointments to the Supreme Court of Canada must be based on clear recognition of ability and competence by their peers in the legal profession and the general public and the approval of the Queen's Privy Council, irrespective of their province of origin. Recommendations may also be made by the provincial government, but the final choice must remain with the federal government. As judges are supposed to be impartial and nonpolitical, the federal and provincial bagmen must have no say in appointments to the Supreme Court of Canada.

The Senate: The Senate must be reformed and freely elected by the people of Canada in the same way as the House of Commons. Its role must be strengthened by freeing it from appointments by political patronage. Its real function is to serve the interests of the people of Canada, not any particular political party or province. As an interim measure, giving the provinces some say in appointments to the Senate only extends the scope of political patronage but does nothing to eliminate it. Only a freely elected Senate can meet the needs and wishes of the people of Canada.

The federal government and the House of Commons alone have the authority to reform the Senate according to the will of the people of Canada. Royal commissions should be appointed to draft appropriate legislation for an elected Senate to be presented to Parliament for ratification before the next federal election. The Senate will then be free to serve the people of Canada and not the interests of the political bagmen who wield the power today.

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In conclusion, the Meech Lake accord was drawn up by honourable men of good intentions. In an atmosphere of goodwill and understanding, it can provide a foundation for beneficial reforms to the Constitution. However, as Shakespeare said, "The evil that men do lives after them; the good is oft interred with their bones." Thus, the Meech Lake accord must be open to the comment and careful consideration of the people of Canada whose will in the last resort must prevail.

Mr. Chairman: Thank you very much. You have put forward a number of interesting thoughts, as well as the particular case of the Senate, a recommendation that is an interesting one in terms of just how we would go about redefining the role of the Senate.

One of the questions that underlines some of the points that you are putting forward is how we wrestle with the question of what is national. Is the federal government the national government or is it a federal government? The definition of the national will, the definition of national programs, whatever, inevitably is done by bringing together the federal and the provincial governments because each has certain spheres of influence.

In looking as you look at, say, an institution such as the Supreme Court, is there not an argument to be made that because that court, among other things, is interpreting constitutional matters that may arise from time to time concerning the federal and provincial governments, that there needs to be a very clear role that the provinces have in the development of that court and in the appointment of judges? I would be interested in your reflections, because I think it is something that as a committee we are wrestling with, in trying to come to grips with that whole aspect of having a strong federal government and strong provincial governments and determining what is national.

Mr. Robertson: I appreciate the point you made, but there is a point I am trying to get over. You mentioned the national government and the federal government.

Mr. Chairman: Yes.

Mr. Robertson: I think the thing that a lot of people forget is that all governments in Canada answer to the people of Canada, and in the order of supremacy, it is the will of the people of Canada that is supreme.

As far as the appointments to the Supreme Court of Canada are concerned, I am not saying the provinces should not have a say in the appointments. The point I am trying to make is that, as the Supreme Court of Canada has to deal with measures of the interpretation of the Constitution, of what we have written, the legal matters, etc., the thing that is most important is the competency of the court itself, the members of the court. In other words, an appointment should not be made to the court just because it is felt that this one should go to such and such a province or that province.

What we have to ensure is a Supreme Court that fully represents the needs of the people of Canada, irrespective of their origin. In Canada at present, for instance, one could say that it is quite possible that an Ontarian may be appointed as the Supreme Court representative of Quebec because he may have been born in Ontario and moved to Quebec. The reverse is also true.

The point I am trying to hammer home is let us not fragment all appointments into, "This is your allowance; that is their allowance." Let us concentrate on the main function of the appointments and the ability of the members to perform the duties that they are required to do on behalf of us, the people of Canada.

Miss Roberts: Thank you very much for your presentation and, in particular, your concerns with respect to the Senate. That is one thing I would like you to elaborate on a bit more. The first ministers are to get together some time in the future. On their menu is going to be reform of the Senate or looking at the Senate. You are suggesting that they do not do it in that process, that it be done directly through a royal commission by the federal people. It is a national body, and you think the national government or the federal government, the government in Ottawa, should be responsible for it?

Mr. Robertson: Again, let me clarify a point here. I am not saying the provinces should not get together and discuss Senate reform. I think it is a good idea, but it is a bit like the Meech Lake agreement. The reform of the Senate is not just a matter for the provincial premiers; it is a matter for the people of Canada.

Like every other problem that comes up, we appoint royal commissions as one of the Canadian ways of tackling a problem. In that way, you do have the input from people who are not members of any provincial government. They are private citizens, other interest groups, etc., which does not really matter. Perhaps, logically, it might be better to have the royal commission first, where you get input from everybody, present the recommendations in ??parallel with the provincial premiers and then, once you have some sort of agreement, the government in power, which has drafted appropriate legislation, brings it towards Parliament for ratification. As I suggested here, this is a matter of supreme importance, that whatever is drafted should be set to the test of an election.

Miss Roberts: What you are suggesting then is that the provincial legislatures should not have anything really to do with the passing of that? It would not be sent back to us in any way, shape or form to look at and ratify this particular change?

Mr. Robertson: Under the present Constitution, you cannot ratify it without the agreement of the provinces. Is that not correct?

Mr. Chairman: That is correct.

Mr. Robertson: I have assumed that until the laws are changed, the existing laws apply. However, if it is done solely with the provinces, then I think that you are following a pattern in the Meech Lake agreement. I come back to the Meech Lake agreement. I believe the people who drew up the Meech Lake agreement did it primarily to get Quebec into the Constitution. I do not think there is any doubt about that. As far as the Premier of Quebec is concerned, he has a problem. He has to get back into the Constitution, to sign the Constitution under some sort of terms that he can still preserve his political base in Quebec. So the premiers and the Prime Minister have sat down, and have come up with the Meech Lake agreement, I say in all good intent.

Granted their intentions are honourable. I still think that an agreement drawn up hastily by 10 people alone--and we already have statements made that on no account are they going to modify or change this agreement; Quebec has signed it--is not the democratic way to do it. I can see their bringing up an agreement and presenting it to Parliament to be ratified in the normal way; that is a democratic agreement.

With the reform of the Senate, all parties are involved, the provincial governments and the federal government. Primarily, we want a Senate which will be responsible to the people of Canada. We do not want a Senate that is appointed through patronage.

Mr. Breaugh: Many of us are kind of struggling with a number of things on this agreement.

Mr. Robertson: I am sure you are.

Mr. Breaugh: The process is one which is not helpful, to be blunt about it. The concept that 11 people met in secret and put together an

agreement that nobody else could touch is distasteful, to be polite. It really runs against our democratic notions.

In part, what we are trying to do with this committee is to try to put a little balance into that to see that there is an opportunity for people come forward and put their positions and to struggle, as the people who drafted this agreement did, with the basic concept of the rights of minorities as opposed to the power of a majority. In many respects, if there is a critical factor in there, it is to try to assess whether they were successful at that. I think we start from the position that any time we say that someone has a constitutional right in this country we are talking about something that is new and different. We have not had constitutional rights in Canada for very long.

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Mr. Robertson: May I just interject one point here? I think we dwell very often too much on rights and not on responsibilities.

Mr. Breagh: That could be, but you see, as someone who grew up as a little Irish Catholic boy in a predominantly Protestant United Empire Loyalist community, I think I have some sensitivity to the fact that maybe the majority is not always correct. Maybe once in a while there may need to be a legal right which the majority of people frankly do not want; this is going to cause them some inconvenience. Striking that balance, which is difficult, is what this constitutional exercise is about. Now, whether a correct balance is struck here or not is a good question, and we have heard testimony from all kinds of people that the balance is out of whack.

Let me put to you that that is our problem, that is what we have to wrestle with: an assessment of whether the balance was correctly struck in this accord or not, part of which is the newness of constitutional issues. We are having trouble with that.

As someone who has been elected for a while now, for example, I probably should have known that seven of the 10 provinces have immigration agreements and that Quebec is no different from six other provinces in Canada in that regard. When you read the fine print in here, it is pretty hard to disagree that if it is good enough for Nova Scotia, why can Quebec not do the same thing? Well, of course they can and they have for some period of time.

I think too that we have to struggle with the notion of where does democracy fit in this? The suggestion in here as to how to appoint people to the Supreme Court is a little bit different from what we have traditionally done. Part of our assessment process is, what have we traditionally done?

That is not a well-understood process in Canada. At least now, though this might not be a perfect arrangement in this accord, at least it will be out in the open. Whereas previously it used to be a phone call to a Premier's office saying, "Who have you got that would make a good Supreme Court judge or a good appointment to the Senate?" they will now have to put forward a list. The federal government still retains the right to say, "Yes, we think that is a good person," or, "No, we do not like that one." We have had some argument as to what happens if you do not get agreement on that and you arrive at a stalemate.

But I think the larger question we have to address, and I would be interested in your comments on this, is just where does democracy fit into

this process? We are not off on the right foot if we are off on the assumption that 11 people can meet in secret, strike a deal and nobody else in Canada has a right to amend that deal, no one else in Canada can change that.

Maybe many of us will be satisfied if we say: "Listen, that is the last approach of that nature that we will ever have in this country. From this point on, here is the process we will use to change the Canadian Constitution: public hearings across the country, motions through the legislatures. They get forwarded to the federal Parliament. They go on a first ministers' conference agenda, and then you can make your decision."

I would be interested in your perspective on what we do from here. How do we change this process that has a lot of faults and make it into something that is better, more acceptable and gives the Canadian people access to this process?

Mr. Robertson: As far as I am concerned, 11 people in Canada do not have the right to change arbitrarily the Constitution of Canada. Now, you can say that they still have not really got that right, because if Parliament does not pass it, it does not become law. Correct?

Mr. Breaugh: Yes.

Mr. Robertson: I think the difference is that it was done in a hurry, it was done in good intent. It could have been done exactly the same way but, instead of coming out with the agreement, they could have said: "We have had a meeting. We have a problem with Quebec. Here is what we think is an acceptable solution. We are going to accept that as it is at the moment, but we are going to present it to Parliament in the normal way for consideration by the people of Canada." In such case you have a process that is open for change and modification.

If I go a little bit further and look into the future, had we at this moment an elected Senate--and by that I mean elected in the same way as we do our House of Parliament; it may not be exactly the same in the mechanism, but what I mean is that the members who wish to be appointed to the Senate have to run for the office--if we had an elected Senate like that even today, with the present powers of the Senate unchanged--in other words, if it had the power to delay but not completely veto the Meech Lake agreement--I would probably be happy with Meech Lake because I would say that it has to stand the test of Parliament and it has to stand the test of the Senate.

But in actual fact we have a Senate that, although it does good work, when it really comes down to the fine line, as we had in a recent case where it delayed a bill, finally it did not have the courage to veto it. It washed its hands of it and walked away. I do not want to see a Senate like that. I want to see a Senate that accepts its responsibilities and acts on behalf of the people of Canada.

I have another little point to take up. You mentioned the fact that you are in a minority situation because of your religion in a community that was predominantly Protestant. Is that not correct?

Mr. Breaugh: Yes.

Mr. Robertson: When Pierre Trudeau gave his speech on television, he was very strong--and I must say that I very rarely agreed with Pierre Trudeau while he was the Prime Minister of Canada--but he made the point and he

hammered it home time and time again: He was a Quebecker. He did not need any special privileges to compete in Canada. In my brief that is one of the strong points that I am making. I object to special privileges to any province, not just Quebec. I would like my brief to be taken not as anti-Quebec but as pro-Canada.

I actually sent a copy of my initial brief to Pierre Trudeau, because I was interested to hear him on TV, and I passed him my views. One of the points I made to him myself was that I have actually worked in Quebec, I have worked in France and I have worked in various parts of the world. By my accent you know that my origin is Scottish, but I am a Canadian citizen.

When I worked in Quebec I did not ask for any special privileges to work in Quebec. I did not ask for special privileges when I worked in Japan for a short time, or in other places. I took the situation as it was and I fitted in. I believe that somebody who comes from the outside has a duty to fit in.

However, there is a difference between fitting into an environment where we are supposed to be one nation, Canada, and at the same time we make special distinctions. I made the point that whether you are a pipefitter, a teacher, a lawyer or an engineer--perhaps only a politician has the privilege that he can work in any province without having to have a special certificate.

Mr. Breaugh: It is unskilled work; that is why.

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Mr. Robertson: In trades and professions, because of the way we set up our provincial boundaries, we cannot really move freely from one end of Canada to the other. If I am a trucker, I have to have so many licences that I can hardly see my truck to move goods from Newfoundland to Vancouver.

Now everything that we do to make special distinctions, special status, means that everyone of us in Canada is all the poorer for it. Through the tone of my brief, you may think I am anti-Quebec. I am not anti-Quebec. As I said, I have lived in Quebec, I have worked in Quebec. I speak French, perhaps not as well as I would like to speak French, but I still maintain my interest in French. I take the odd night class and that just to keep fresh in the language.

If I was working in Toronto where we have a large Italian-speaking community and we were having a similar situation to working in Quebec, I would certainly make a point of learning enough Italian to be able to work and live amicably in that particular area of Canada where I live. But at the same time while not opposing any attempts at Quebec to preserve their language or their national characteristics--

The first speaker made the analogy of a family. I have four children, each one is unique. Each one of us around this table is unique. But if I have four children I treat them all the same. I cannot say, "Well, sorry you have special status, because you are the eldest son or the younger son, or younger daughter. We are all part of a family." That is what we have to aim at getting in Canada. We have to abolish these artificial boundaries between the different areas of the country, whether it is the Northwest Territories, whether it is Quebec, Ontario or Manitoba.

When I first came to Canada I was really astounded when I travelled across the provinces. "Everybody hates Toronto" is the attitude. Ontario hates Quebec. Quebec hates the rest of Canada and as far as Alberta is concerned,

"Let these people down east freeze." If you are playing hockey, that is fine. But if you are a country, you cannot accept that.

Within our own country, no matter what language we speak, what our origins are, we are all presumably Canadians. We all have equal status and that is what we are aiming for.

Mr. Chairman: Mr. Robertson, I think your last comments are perhaps a good place to end because you have I think given us, not only in your brief, but in the answers to the questions, certainly a strong sense of your desire at maintaining and enhancing that which makes us Canadian. We are particularly grateful when a private citizen comes forward and thinks through his thoughts and arguments and places them before us. A number of us have made the reference that it would be good for a lot of the committee processes if in fact more citizens would feel that they can come forward and not feel that they need to be intimidated by this procedure.

We thank you very much for taking the time to prepare your brief and for sharing your thoughts and comments with us this morning.

Mr. Robertson: Thank you very much.

Mr. Chairman: If I might now call upon Anna Czesnik, the Refugee Host Program co-ordinator, and Richard Paterson, volunteer with the Refugee Host Program.

I believe that we all have received a copy of your brief and as we have with our other witnesses, I will let you present the brief. We will follow up with questions and we thank you very much for coming and being with us this morning.

REFUGEE HOST PROGRAM

Ms. Czesnik: Thank you very much. Dear members of the select committee and ladies and gentlemen, my colleagues and I are honoured to be here today and to have the opportunity to comment on the Meech Lake accord. We are participants of the Refugee Host Program which is federally funded and administered by the Kitchener-Waterloo Young Men's Christian Association.

The goal of our program is to help in the integration of newcomers in our community, by linking them with Canadian families. There are over 120 such families in Kitchener who have volunteered their time and energy to befriend refugees who come to our city. They are teachers, nurses, engineers, students, homemakers and mothers. Many of them have worked with refugees since the 1979 boat people crisis and continue to make valuable contributions to the settlement of refugees in our community.

In view of our extensive refugee experience, our presentation today will focus only on the immigration chapter of the constitutional accord. Our presentation will be in two parts. I will make a very brief one and then Rick Paterson will continue.

Our committee from the Refugee Host Program in Kitchener, sees the following points as possible ramifications of the immigration provisions of the Meech Lake accord. We urge you to take them into consideration and reject the section of the accord which would offer Quebec greater autonomy in refugee selection and settlement and would ultimately allow all provinces to act independently.

Federal financing of settlement in Quebec of disproportionate numbers of refugees, would mean that residents of Ontario and other provinces, would be promoting Quebec's economic development through their income taxes. The accord does not seem to make provisions for refugee determination of claimants. If acceptance were a provincial responsibility, provinces would have to station officers at all points of entry.

There is a possibility that residents of refugee camps might wait even longer for processing if they had to deal with provincial authorities who could probably visit the camps only on an infrequent basis. As it is, with more centralized federal bureaucracy, many refugees arrive here after six or seven years in the camps.

Provinces which are extra selective about the refugees they take in are not especially altruistic. It is a greater humanitarian gesture to accept refugees on the basis of their need for asylum rather than their linguistic capabilities.

Quebec's favouritism for francophone refugees, which would mean South East Asians and Haitians, would be construed as a form of racial discrimination and therefore a violation of the Charter of Rights and Freedoms. Provincial responsibility for settlement, would mean different benefits in each province. This will result in a second migration of refugees to those provinces with the most attractive benefits packages.

For example, the quota for Kitchener-Waterloo for the year 1987 was set at 245 people, however, an additional 104 secondary migrants arrived. The accord does not address the question of job security for immigrant settlement and adaptation program workers when settlement becomes a provincial matter. It is not known whether ISAP workers would be retained as provincial employees.

Designating refugees as residents of Quebec, or of any province, is unrealistic because the charter guarantees freedom of mobility. At the present time approximately one third of refugees who are settled in Quebec choose to relocate to other provinces, primarily Ontario.

If the provinces get involved in refugee selection, it is not certain that they would be included in international forums. The United Nations High Commissioner for Refugees might resist offering accreditation to delegates from the 10 provinces and the territories.

Separate action by the provinces would threaten Canada's image abroad. It would leave the impression that the country is disjointed and disorganized. Refugees abroad would be confused by having to apply for asylum in provinces they have never heard of. They only begin to distinguish between different jurisdictions once they are settled in Canada.

Mr. Paterson: Canada is a large country with a small population in a crowded world. Over the years it has built up a worldwide character and reputation for having a heart as big as the size of its country. This heart is an example to the people within her borders as well as the world watching from without.

Individuals such as Norman Bethune, Lester Pearson, Chris Giannou, Brock Chislm, Robert Bateman, Nancy Pocock, Robert McClure and many others went out as Canadians into the world.

Canadian armed forces personnel supported the International Control

Commission in Vietnam and peace keeping duties in Cypress, Gaza, Lebanon, as well as refugee evacuation work in Chile.

Nongovernmental organizations such as the Canadian University Service Overseas, ??CCI, ??MCC and many others, have provided Canadian volunteers to work on development in the Third World.

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During 1969-70, millions of US dollars were funnelled through the Canadian Red Cross for food and medical aid to civilians in the Nigerian civil war. As well, Canadian relief agencies provide personnel and resources in times of disaster and famine.

Canada is well known as a supporter of Third World development by countries such as Norway, Sweden, Germany, Great Britain, France, Holland, Italy, Australia, Japan and others.

In 1979-80, Canada's caring and sharing role took a giant step forward for mankind. To help with the crisis of Boat People refugees, the government of Canada offered to support small groups of Canadians who wanted to sponsor a refugee or refugee family. Other countries watched this Canadian experiment. In Canada, people gathered in groups and applied as sponsors. Eventually, thousands of refugees beyond the original projected figures were sponsored across the land. For this type of program, it was possibly the most successful in history.

In the not too distant past, Canada's response to refugees has been disgraceful.

In 1986, in recognition for her work with refugees, the people of Canada were awarded the Nansen medal. The foremost award in this field, usually presented to individual persons or agencies, for the first time was presented to a country, Canada.

Canada's high level of integrity and commitment to caring and sharing has been recognized and honoured by her peers in the field of refugee work. The government-supported refugee program is a vital part of Canada's work to help the Third World. Canada's image internationally has been built by the toil of individuals, nongovernmental organizations with their volunteers, agencies and all their supporters in Canada, and by branches of the federal government.

The proposed changes to the government-sponsored refugee program will divide and devalue the honoured role Canada has grown into, earned and plays on the suffering world stage, role-modelling the high aspirations of mutual responsibility and interdependence to a world that is often frightened, confused, cold and hungry. This modelled behaviour is important to any society and more so in the world society. Canada is living the role of caring and sharing collectively and is recognized by her peers as the best at it.

Canada has a small population in a large country. It is seen by the world as having a large heart. From our past, there have been times of small heart and no heart at all. Why do we want to return to that? Why do we want to show the confused and needy refugees of the world that we are a confusing bunch of little parts in what was formerly known as Canada?

Many Canadians have paid a price to help the Third World and the Third

World has learned of the character and humanity of Canada. Let us not do anything to confuse or make this earned and learned image any less in any way.

Mr. Chairman: You have focused on an area that has come up from time to time, but I think your particular perspective and background lends a different element of interest to our discussions this morning. I will begin the questions with Mr. Elliot.

Mr. Elliot: Thank you very much for your presentation. By way of preliminary comments from my own point in welcoming you here, I would like to let you know that I graduated from Kitchener-Waterloo collegiate. In introducing the YMCA the way you did, you left out the name of A. R. Kaufman, whose son owned and operated the farm next to the one I managed in my teenage years and my young adult years as I was going through university.

The reason I mention his name is that I think the importance of your brief, and I am sharing this with the rest of the committee, is that it points out, because of the YMCA being named after Kaufman, that there has been a long tradition of refugee acknowledgement from a reception point of view in the Kitchener-Waterloo area.

Because of what you are saying in your brief, I suppose the type of thing that was happening when I was a teenager and a young adult in the area is still continuing. My own wife came from a displaced persons' camp in Germany as an Estonian immigrant. I know the only reason she was assimilated into the Kitchener-Waterloo area and learned English as quickly as she did, in spite of the fact she learned it at school in Germany and in Estonia, was because of the number of volunteers, some of whom we still correspond with on a regular basis.

That tradition in the area gives a lot of credibility to the kinds of concerns you have. It also is a reason why, when I found out the immigration problem with respect to the accord was going to be paramount in a lot of people's minds, I asked the young person I have on my staff who is doing my research for me why there was the concern with immigration in Quebec.

The kind of information he gave me was that as the proposed amendment states, it is 25 per cent plus five per cent, possibly 30 per cent. Apparently, in the last year or two, immigration coming into Quebec is around 19 per cent, so it is a kind of aim they are trying to get. The main problem with respect to Quebec is the declining population there. The birth rate is dramatically lower in Quebec than it is in the rest of Canada, so it is a real concern.

The other piece of information he was able to find is that there are at least six centres in the world now, sponsored by Quebec, that are actively seeking and promoting immigration to that province. This caused me a lot of concern the first time he reported it to me, but I am no longer concerned because I have double-checked and they only operate in close assimilation with the federal immigration outlets in the same centres. One of them is in Paris, for example. They work in tandem as opposed to working exclusively for Quebec.

The kind of thing you are talking about with respect to all 10 provinces doing the same thing is not a concern any longer in my mind. It was a concern at the time I asked him to do a little bit of research in that area.

The kind of thing I would ask you to comment on a little more fully is, would you be as concerned if, down the road, you saw the birth-rate problem

continuing as it is in Quebec with respect to having a population that is not in decline all the time and never attaining the 25 per cent, and working in conjunction with the federal government in order to try to attain that, knowing full well that a lot of the people like relatives of my wife who came to Montreal first, stayed the year they were required to be with their sponsor at that time and then came to Toronto? There is absolutely no way the boundaries are closed to the immigrants once they are established inside Canada.

Are the kinds of concerns you are pointing out in your brief still paramount? If that is the kind of flavour that is associated with it, would you be less concerned?

Mrs. Czesnik: I think our main concern is in the selection process of refugees. When you are going out into the refugee camps or going out into the different parts of the world where refugees are in the camps, people from Quebec would want to choose refugees who speak only French. They would be given, I believe, 15 points for the ability to speak French, and of course fewer points for the ability to speak English.

What we are concerned about is if there is a refugee in jail, for example, and his life is being threatened and someone from Quebec goes to interview him and says, "I am sorry, but we cannot take you to Quebec because you do not speak French." This is our main concern, that there will be a lot of discrimination on the basis of linguistic ability.

Mr. Eves: As you have undoubtedly heard and probably know all too well, there are agreements the federal government has with other provinces besides Quebec. I take it then that your concern is related to the wording in the accord that is going to guarantee that Quebec receives a certain percentage of immigrants to Canada each year. Is your concern focused on that particular guarantee or is your concern much wider than that? Mr. Elliot was just talking about the immigration services Quebec has, for example, in six other countries. Is your concern an all-encompassing one or are you narrowing your focus to this particular wording in the accord?

Mrs. Czesnik: I think our concern with the guarantee is that if the federal government continues to set international quotas and Quebec is guaranteed, I think it is one third of those quotas, what happens then if the other provinces also want to have this agreement and would like to have more refugees? What if Ontario wants more than 75 per cent? What if some provinces do not want any? Does that mean some provinces will have to take more? I think the numbers will have to be clarified a little bit. I do not think it is very clear to us. What if several years down the road Quebec decides it wants only 25 per cent or maybe 15 per cent? Does that mean other provinces will then be forced to take more? How would that work? We are not clear on this.

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Mr. Eves: Basically you are very simply saying that all provinces should be treated equally in this regard, and if you are an immigrant to Canada and are about to become a Canadian, you are a Canadian.

Mr. Breaugh: I think we need to pursue this a bit, but my understanding is that refugees are excluded from the immigration provisions in the accord. In other words, the accord deals with where people will go after they have been accepted into Canada. Placement in that regard will--my perception is that it really does not do much more than what we have

previously done by means of a negotiated agreement. I think seven of the provinces have done this and it talks to placement of people, acceptance of professions, basically the needs of the provinces in terms of one province needing more doctors and would like to assist in the placement of those.

I do think we need to pursue this a bit more, but my understanding is that the basic rules have not changed, that the prime responsibility remains with the federal government and that the accord speaks to placement of people after they have been accepted into Canada, whatever their status might be. In the existing agreements, they essentially are all saying the same thing. They say it in slightly different language. The province of Quebec has opted to do it in more detail, but it is not much more than a placement of people after they have come to Canada, and at least my understanding is that the federal government would not be abrogating any of its responsibilities for immigration or for refugees or for any of that under this accord, but that it formalizes existing agreements. It does not appear to me that there is much in the way of change there.

I tend to agree that perhaps we should pursue that a little more aggressively. What I would like to get from you is whether you have any sense that there is anything different from that.

Mrs. Czesnik: From reading the chapter on immigration, we were under the impression that Quebec would have the choice to select refugees. We were also under the impression that if other provinces were signing this, all provinces would have the choice. In other words, a refugee would be accepted by Quebec, and then perhaps by the federal government. The refugee would come first to Quebec, be settled there, and of course the refugees have every right to move if they so desire. Also, all the services that would be provided would not necessarily be provided directly by the federal government, but would be provided by the provincial government.

Mr. Breaugh: I should tell you that is not my understanding of it.

Mr. Chairman: Mr. Breaugh, could I?

Mr. Breaugh: Yes.

Mr. Chairman: You are quite right. This is a very important point. I agree with you. We certainly want to check this out, but it is my very clear understanding that would not happen. I think it is important we look at that.

Just in adding, if I can, and then we will get back, some decade or so ago, for a time I was director of citizenship for the province. Of course, we dealt a great deal with the federal government in terms of immigration, because obviously, for Ontario, we had the largest number of people who were coming into Canada. Now again, immigration under the British North America Act is a shared responsibility. As Mr. Breaugh says, with respect to the agreements that exist between the federal government and a number of the provinces--the first one was with Quebec--as I viewed that development, it was always within the context that, clearly in terms of the selection of immigrants, that authority rested with the federal government, particularly with refugees.

If there was the slightest suspicion that the problem for a refugee coming into Canada was that province X was saying no, I think there would be an incredible furore. All that is aside from the fact that we may feel that the current bill before Parliament that relates to refugees is, to put it mildly, not a terribly open one.

I think that you underline a question that is an important one to resolve, but it is one, to this point, that has been answered for me. I have just been provided with a quote that I will share with you. This is all in the context that we are all exploring and trying to get this clearer. This is a quote from Professor Hogg's annotated book on the Meech Lake constitutional accord with reference to immigration. I am just quoting this one section. He says:

"Subsection 95B(2)," which relates to this issue," carves out an important exception to the general rule. Subsection 2 preserves the power of the federal government to set 'national standards and objectives relating to immigration or aliens.' A federal law that is characterized as setting national standards and objectives, thus, remains competent to the federal Parliament and will be paramount over any inconsistent terms of an immigration agreement."

When he spoke before the committee, both in terms of the fact that the charter--and it is specifically set out that the Charter of Rights must apply in terms of mobility and various other rights--and in terms of this statement, it was his view that whatever the role of the province might be in developing numbers and so on, the paramount authority continued to rest with the federal Parliament.

Mr. Breagh: We want to pursue, obviously, the points that you have raised, but in our investigations so far, my judgement would be that the role of the federal government remains paramount. It decides who is allowed to come to Canada. Subsequent to that and perhaps concurrent in terms of setting targets for numbers and kinds of people, classifications and all of that kind of stuff, the provinces will be co-ordinating and we have now formalized what we previously did by means of agreements between the provinces and the federal government. Frankly, I do not see much need for concern there, as my understanding of it now relates to that. If you encounter problems, we would certainly appreciate hearing from you.

Mrs. Fawcett: When you were talking about the possible ramifications of the immigration provisions of the Meech Lake accord, in one paragraph you were saying we would be promoting Quebec's economic development through income taxes if this greater proportion of people were allowed to come to Quebec.

First, I think of myself as a Canadian. If these people are coming to Canada, that is the first provision. In Quebec, I realize the ramifications of that. In the second last paragraph at the bottom of that page, you say: "Provincial responsibility for settlement would mean different benefits in each province. This would result in a second migration of refugees to those provinces with the most attractive benefits package."

I am not sure about that. I just wonder if that maybe would not be because of family friends or other things that would send these people to other parts of the country. Would that not, in fact, then be benefiting all of Canada's economy? If they do not necessarily stay in Quebec, then they are going to other parts of Canada which, in turn, could help the Canadian economy and maybe my tax dollars would not be going solely to promote Quebec's economic development.

Mrs. Czesnik: When we were discussing this, our idea was that since Quebec is going to receive one third of Canada's refugees or Canada's immigration, funding would go to Quebec for that number of refugees. Also, one third of those people will leave Quebec and go to other provinces. Perhaps other provinces offer a shorter waiting period for English-as-a second-language classes. Perhaps the refugee feels, "If I go to Ontario or if I come to Kitchener, perhaps I will get a job much quicker than I would in Quebec." This is already causing a lot of this secondary migration.

Mrs. Fawcett: Is that a problem, though? Is that something we do not want, that you do not feel is a good thing?

Mrs. Czesnik: Even if Quebec wants one third of Canada's refugees and immigrants, it will not be able to keep them there in a sense. They cannot force them to stay in Quebec.

I think the difficulty it is creating in Kitchener specifically is in housing. Housing seems to be a very big problem there. If we have 104 more people arriving than we had expected, we certainly need more funds for these people to provide them with housing, to provide them with clothing and English-as-a-second-language courses. When we have our budget set for Kitchener, when we have the budget set, say, for 245 people, we then may get 104 more who perhaps come from Quebec. They do not, but for the sake of argument, they may come from other provinces which will already have received funds for those refugees.

Mrs. Fawcett: Are you saying that maybe the regulations should be changed in that they should have to stay in Quebec?

Mrs. Czesnik: We cannot do that.

Mrs. Fawcett: Of course, yes.

Mrs. Czesnik: This is an interesting dilemma.

Mrs. Fawcett: Thank you very much.

Mr. Elliot: As a supplementary to that, a better deal might be portability of whatever money goes with the person until he is assimilated. The Vietnamese families we have sponsored in the Halton region all have similar families in Montreal. The initial package of apartments, housing and that kind of thing in Quebec was a lot better, but the kinds of things you are talking about finally made our people very happy to be in our area and stay there. In fact, some of their relatives started moving this way. The unfortunate thing was that the federal money stayed in Quebec, I guess, for the numbers that they were getting and we are not getting it in Ontario. I know in the Kitchener-Waterloo area it would be a bigger problem than it was in Oakville.

Mrs. Czesnik: Yes. We have a lot of jobs available and that news seems to travel very quickly across the country.

Mr. Chairman: That is the problem with southern Ontario right now, whether it is just relocation or movement of immigrants in a sense. Generally speaking, because we have been doing better, we are getting more people.

I want to thank you very much for the focus of your brief. The questions you raise, and I hope our sort of reaction to them, underline not that we are sorry you raised these, because they are very important, but we do want to doublecheck on some of the things we understood these clauses to mean, because we had concerns and would have, I think, similar kinds of concerns to those you have raised. We are going to make sure that we are clear on some of the issues as they would affect the rights of people coming into this country. Certainly, we do not want anything that is going to cause in a constitutional sense more problems for refugees who are trying to escape from various countries.

I would also say to you on behalf of the committee that if, as you go forward from here, there are other pieces of information that you find unsettling, you should continue to be in touch with us so that we can be aware of these. Sometimes when we go through these processes of constitutional change, people's intent is to do something, but then other things start to come perhaps from those amendments, and we want to be very clear. I think you really have provided us with a focus on the amendments as they pertain to immigration, and that has been very useful for us. Thanks very much for being with us this morning.

Mrs. Czesnik: Thank you very much.

Mr. Chairman: Just before adjourning, if I could, I have a couple of administrative notes. I am not sure whether this anticipates the distinct society, but two tables are reserved for us downstairs in Abernathy's. There is freedom of mobility to sit at either one. It is on the first floor and the reservation is in Debbie's name.

Would you also make sure before we come back at two o'clock to check out of your room. Fortunately, the clerk is paying the bill.

Interjection: No opting out?

Mr. Chairman: No opting out on the bill. We will adjourn until two o'clock.

The committee recessed at 12:26 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

THURSDAY, FEBRUARY 25, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Farman, Michael (Cambridge NDP) for Mr. Allen

Clerk: Deller, Deborah

Staff:

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

Fullerton, Jack

Laur, Tina

McDonough, Connor

Korbin, Donn

From the Chippewas of Kettle and Stony Point:

Shawkence, Chief Charles K.

AFTERNOON SITTING

The committee resumed at 2 p.m. in Carleton Hall, Holiday Inn City Centre, London, Ontario.

Mr. Chairman: Good afternoon, ladies and gentlemen. If we can begin our afternoon session, I would like to invite Jack Fullerton, Tina Laur and Connor McDonough to come forward. It is a pleasure to welcome you here this afternoon. I believe you have come over to London from Sarnia, if I am right.

Mr. Fullerton: Right.

Mr. Chairman: So we are pleased, if I can say in a bipartisan way, to invite constituents of Andy Brandt to the table. We have all received a copy of your submission. Perhaps the best thing then is to let you proceed to set out the various points you would like to do. We will follow that up in the usual fashion with questions.

TINA LAUR
CONNOR McDONOUGH
JACK FULLERTON

Mr. Fullerton: We thank you for allowing us to appear before you. We have been following your hearings on television and we have read the comments that have appeared in the print media. We are here because, like you, we love our country and want to see it live long and prosper. Others whom you have already heard have been learned in the law and knowledgeable about Canadian history. We bring you the perspective of average Canadians with a view of our history and a philosophy of the workings of our Canadian government.

I would like to introduce Tina Laur and Connor McDonough. Both are grade 13 students from Sarnia. I will let Tina and Connor elaborate on their respective backgrounds, but I would like to state at the outset that the three of us unanimously agree we are reasonable people.

Miss Laur: Hi. It is my pleasure to be here today. I am 18 years old and a full-time student at Northern Collegiate Institute and Vocational School in Sarnia. I have a close family, including one brother. My areas of interest are in political science and history, which I hope to pursue at university. In the past two years, I have spent three months as an exchange student in northern Quebec and one year as an exchange student in India.

My travels have allowed me to see Canada from the outside as a country of luxury and freedom, but most of all, I have discovered Canada to be my home. Therefore, I come before you today to share my concerns on the Meech Lake accord, not as an expert but as a young citizen with the hope to preserve Canada as a place I can call my home for ever.

I feel strongly that the concept of the Meech Lake accord is a fantastic step for Canada, but the details of the document must be looked at with care and discretion. Its importance is too great to be rushed into existence. Now I would like you to meet my friend Connor McDonough.

Mr. McDonough: Good afternoon. I thank you for this opportunity to speak before you. My name is Connor McDonough and I am a grade 13 student at St. Patricks High School in Sarnia. I am the eldest in my family, with two younger brothers and a sister. Within the past year, I have travelled to both

Haiti and Ireland and have seen and learned a great deal. This September, I hope to study political science at the University of Western Ontario.

With respect to the Meech Lake accord, I agree with the concept of the agreement. Canada is in need of constitutional reform. However, I feel that there must be changes in the wording of the accord in order to qualify many of the statements. There are vague and ambiguous proposals that will have far-reaching consequences and will sow the seeds of dissension across Canada.

I have seen, both in Ireland and Haiti, the results of a divided country. The accord must, as is its objective, unify Canada. Today, I ask you to have the wisdom to see the changes that must be made and to have the strength and courage to make these changes.

Mr. Fullerton: I lucked out in the choice of these two students. I simply phoned teachers and said I would like to have a couple of brilliant students. I think they did very well in their selection. I represent, if you will, Canada today and these young people represent Canada tomorrow. The accord you are considering will affect them longer than it will affect me, although I hope to be around for some years to view its impact.

I come to you with a background of 35 years as a working journalist chronicling events. In my years as a journalist I have witnessed a lot of memorable events and I ask you to recall one of those events right now.

I ask you to recall and bring to mind that morning when 11 tired men emerged from the Langevin Block in Ottawa. They were jubilant as they faced the television cameras, the microphones and the writing pads of the assembled journalists. Everyone was euphoric. There were congratulations all around. Many photo events were staged in the hours that immediately followed the early-morning signing of the Meech Lake agreement. It heralded, they trumpeted, a day of reconciliation within the Canadian family. But I also ask you to recall that the cameras get turned off, the microphones get put away and the notebooks filed in newsroom dustbins.

You will recall that Premier Peterson was hailed in the days immediately following the Langevin Block meetings as the great mediator, the man who had by cajoling, compromise, wisdom and reasoned argument brought about the accord. Right now, though, in the free trade debate, I am not sure whether all his fellow premiers use those same adjectives they used on the night of the accord, when there were hosannas in the highest.

But away from the glare of the TV lights of that night, away from the laudatory radio commentary, away from the complimentary headlines, we have all had time to examine the documents that produced those media events. There are thoughtful Canadians, reasonable people who have come to have concerns and reservations about some of the clauses and some of the results that may well emanate from those clauses.

You will, as reasonable men and women, agree that the underlying principle of the document is the belief that reasonable people, given the same set of facts, will arrive at the same reasonable conclusions. If this reasonable philosophy holds, then the accord will hold; but if reasonable people arrive at different conclusions, then the provisions enshrined in this accord, we believe, will lead to divisiveness, shouting and acrimony. There will not be those jubilation days. There will not be handshaking all around. There will not be laudatory comments flowing.

What you will have instead will be snarling voices and shouts of "Turn off the cameras," "Get that microphone out of my face" and "No comment" hurled back at scribbling scribes as politicians scurry down halls, run up stairs or dash behind closed doors.

Will there always be sweetness and light? Will all always be in unanimous agreement on contentious issues as Canada travels tomorrow's beclouded pathways? Do reasonable people always agree?

We think Tina has a comment in this area.

Miss Laur: Premier Peterson is a reasonable man and able to think sensibly and wisely. I think some people may be chuckling at that and others are probably pretty sure they agree on that one.

Mr. Breaugh: Let the record show there are no Liberals chuckling.

Mr. Chairman: Let the record also show that Mr. Breaugh is not always right.

Miss Laur: Brian Mulroney, Robert Bourassa, David Peterson, John Turner, Edward Broadbent: reasonable men all, but they do not always agree on a matter, even when they have the same set of facts.

One has only to look at the free trade agreement to see reasonable men in disagreement. If we were to tell Mr. Mulroney that there has to be unanimity before any action can be taken on the serious-for-Canada free trade agreement, he would tell us that such a rule would result in absolute stalemate. Inertia would be the result. Nothing could get done and, he warns us, Canada's economic future could be jeopardized.

We know that for 50 years Canadian politicians of all stripes and persuasions, prime ministers and provincial premiers--reasonable men all--could not get unanimous consent to patriate our Constitution.

Mr. Fullerton: We discussed, based on that evidence, what we could expect under this accord and Connor gave us our answer in our debates.

Mr. McDonough: The Meech Lake accord demands unanimous consent in several critical areas before any changes that may be required in the future to meeting changing Canadian circumstances can be made.

The theme of our presentation, as you will have gathered from the document we provided earlier, was to seek the answer to the question, Can Canada achieve peace, order and good government with the amendments proposed by this accord in place? Our conclusion was no, it cannot.

Mr. Trudeau, utilizing perhaps intemperate language, says no and while we may think many things about Mr. Trudeau, it is generally conceded that he is a man who can think logically, analyse and draw conclusions--the classic dictionary definition of a reasonable man.

An analysis of our history leads one to draw the conclusion that our first Prime Minister, Sir John A. Macdonald, would have come to the same conclusion as Mr. Trudeau, as have many other people. Are all those who hold this viewpoint unreasonable persons?

Tina, as a world traveller, calls for us to look at a wider parallel.

Miss Laur: On the world scene we have the United Nations. The UN has its assembly which can take action in many critical areas on a two-thirds majority vote of its members. Then we have the security council which requires the unanimous consent of its five permanent members on all substantive matters before action can be taken. One veto in the security council stops action, no matter how critical the requirement for action may be.

Would not reasonable men and women, given the global conditions facing this earth, be expected to come to unanimous decisions on such matters as arms control, pollution of the planet, environmental control, nuclear disarmament and world peace? But apparently we cannot achieve unanimous consent among the five permanent members of the security council to save the planet Earth.

Is it logical to expect 11-person unanimity, as will be called for under the provisions of the Meech Lake accord, in order to effect changes in the Canadian Constitution in critical areas involving, as they do, areas of provincial and federal relationships?

In the case of the United Nations, recognition that unanimity was virtually impossible to achieve led to the provision for unanimous consent by the five permanent members of the security council to be modified to provide for action following a two-thirds majority vote in the General Assembly.

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Mr. Fullerton: Tina makes the point that unanimity, even among reasonable people, is difficult to achieve. Totalitarianism provides unanimity, but a liberal democracy is guided by the principle that the will of the majority should prevail.

You, being perceived as reasonable people, were elected to office not by the unanimous vote of all the reasonable constituents but rather by a majority of them. The theme of our presentation is that reasonable men do not demand that there be unanimity in too many cases in order to initiate desired change. We further suggest that there is a concept of Canadian history that supports this view. We have drawn your attention to the words of reasonable men and women--noted historians, legislators and legal experts--who have this same view of our Canadian history and heritage.

Now we come to the crux of the situation, the dilemma faced by this committee of reasonable people. Can changes be made in the Meech Lake accord? If they are reasonable changes, then certainly they can and should be made. Or is the logic supporting the late-hour, cobbled-together clauses of the Meech Lake accord so shaky that it will not respond to the challenges of reason applied by reasonable persons? Is the accord so fragile that it will not allow for any improvement that will remove ambiguity or add clarity?

Is it logical to brook no reasonable changes at this time, but rather to rest our hopes for such reasonable changes to a future day, when all changes in an expanded area of the Constitution will be required to pass through the unanimity amending process that will then be mandatory?

Winston Churchill has said: "The only guide to a man is his conscience; the only shield to his memory is the rectitude and sincerity of his actions. It is very imprudent to walk through life without this shield...but with this shield, however the fates may play, we march always in the ranks of honour."

President John Kennedy, in the same vein, said: "When...the high court of history sits in judgement on each of us, recording whether...we fulfilled

our responsibilities" to the people, "we will be measured by the answers to four questions: First, were we truly men of courage...? Second, were we truly men of judgement...? Third, were we truly men of integrity...? Finally, were we truly men of dedication?"

The individual members of this committee, in the exercise of their responsibilities, will give their answers to those questions. You must weigh the words of the accord and, in your judgement, determine whether changes must be made, changes we have proposed in our recommendations. Reasonable changes are, we suggest, required. You must have the courage to recommend those changes in full recognition of the consequences of such actions. You have been cautioned that any changes proposed may well be construed by others who deem themselves to be reasonable persons as being harmful to the woof and weave of the Canadian fabric and may result in the rending of that fabric.

We do not for one moment believe that this sundering will happen. Rather, we hold that reason is paramount, that logic will prevail amongst reasonable people. The earlier document that we submitted for your scrutiny details our concerns. We have examined the accord section by section and have come to the conclusion that adoption of the accord with its present wording unchanged will not allow for peace, order and good government for Canada and, by devolution, for the province of Ontario. We three reasonable people agree on this.

Mr. McDonough will comment on our concern with the fundamental philosophy which we perceive underlines the accord.

Mr. McDonough: We draw your attention to the fact that the requirement for unanimity is now called for in a much broader area than was set out in the 1982 constitutional provisions. This can only lead to inertia and stagnation. We cite particularly the provisions dealing with Senate and Supreme Court appointments. This accord, with its decentralization bent, will, we fear, ultimately lead to parochialistic nominations by provinces seeking to advance their individual visions of what Canada should or should not be. At a minimum, if this section is not struck down, there is a need for a resolution mechanism to resolve situations where provincial nominations are not acceptable to the federal Privy Council. Even now we can see stalemates developing, and the ink is hardly dry on the agreement.

Some potential divisiveness that we perceive as inherent in the accord clauses dealing with the creation of new provinces has been remarked upon in our background paper. We find an interesting parallel in the case of the creation of local municipalities in this province and note that boundary disputes in this regard have become long, drawn-out, acrimonious affairs. None in recent history have been settled with the unanimous consent of all the parties involved. Both Miss Laur and I can comment knowledgeably on this, having firsthand experience.

Miss Laur: In my community as well, we are facing the conflict of a boundary dispute. I live in the newly formed town of Clearwater. There has been an ongoing battle between the mayor of the city of Sarnia and the reeve of the township of Sarnia. The mayor has asked for the annexation of Sarnia township in order that the city may grow, but the township has refused the city's bid and has now gained town status. The township has presented a strong case. The residents are happy with the services they have been receiving from the township and their taxes are generally lower. The people have no interest in joining the city.

The battle has turned into an ego conflict between two men who will never come to a compromise. This conflict has been long and drawn out. The effects and delays are becoming more harmful all the time. The city cannot expand and many businesses are moving from the city into the town of Clearwater. Public transportation and hospital funding are also in jeopardy. That is how I, as a reasonable person, see it.

Mr. McDonough: Miss Laur has told you one side. Let me give you another perspective. I live in Sarnia. Just across the street from me is Clearwater, where Tina lives. Both sides of the street look much the same. Each side has nice new homes and the grass is just as green on either side.

This past weekend, I and a friend had a research paper to prepare. We took a Sarnia Transit bus downtown and went to the Sarnia Public Library and Art Gallery. This is a very common occurrence; there was nothing unusual about it, except for the fact that my friend was using these services for free and I had to pay. I did not have to pay directly for these services; however, my parents have to pay for them through their municipal taxes.

I feel it is grossly unfair for the residents of Clearwater to have the privilege of so many services in Sarnia, such as the public library or the city transit, for free without having the responsibility for their upkeep.

If Sarnia wants to grow and expand because it is presently boxed in by the lake, the river in Clearwater and Chemical Valley, it will have to expand into Clearwater. It must be allowed to annex a part of Clearwater that is deemed reasonable by the residents of the area in order to expand.

However, the major stumbling block to an agreement on the annexation of part of Clearwater is not the opposition of the residents of Clearwater; it is the opposition of the reeve, Ray Whitnall.

Reeve Whitnall is a reasonable man. The mayor of Sarnia, whose goal it is to annex Clearwater, is also a reasonable man. Unfortunately for the Sarnia-Lambton area, and these two reasonable men, they cannot agree. One assumes that they would both come to a reasonable solution, that they could find a solution beneficial to all parties involved. There will never be an agreement, though, because neither party will agree. There can be no compromise for either person. There will never be unanimity.

What is needed to solve this situation is a provincial mediator to come in to find an acceptable decision. They need someone to put his foot down. It is unrealistic to assume the problem will be solved by any other means.

This is very similar to problems that will have to be dealt with if the accord is left unchanged. It is not wise to assume that David Peterson and Robert Bourassa will agree on every point made in the accord. Furthermore, what they might agree on will most certainly have been interpreted differently. We could use the clause concerning Quebec as a distinct society as an excellent example.

With different personalities and interpretations of the accord, there will never be unanimity among the premiers. It is absolutely necessary that we have a central power to decide what exactly is meant by what has been written before, not after, the accord is passed into law. Afterwards, there must be machinery in place to offer compromise, in order to have change accessible to the government and to the premiers. Simply, unanimity will be very difficult to achieve and will probably deadlock provincial and federal relations.

Reasonable men do not agree on everything. They never have and, unfortunately, never will. As I have cited, there is the problem of the Sarnia-Clearwater boundary dispute. Reasonable people are involved in that dispute, but we can assure you that if you wait for unanimous agreement, that dispute will never be settled. An authoritative, decisive voice is needed.

Mr. Fullerton: Mr. McDonough and Miss Laur have illustrated our concern with respect to that section of the accord dealing with provincial boundaries and the creation of new provinces. Seeds of divisiveness also reside, we believe, in the sections dealing with immigration. We perceive here the danger that ghettos at best, or holding tanks at worst, might well be created. This was our perception, as lay people, reading the clauses. In the words of the Canadian poet Robert W. Service, "We ain't as wise as those lawyer guys." Nor did we have ready access to perhaps enlightening documents, but then, as we have noted in our brief, neither do the members of the general public.

In our discussions in drawing up our brief, Tina expressed strong concerns in the area of immigration. I would ask Tina to comment on that.

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Miss Laur: I would like to address my concerns today in particular to the immigration clause of the accord. In the original British North America Act, section 95, immigration was designated as a concurrent power with federal paramountcy. Under the current amendment, federal paramountcy is deflated. In section 95A, Canada is committed to negotiate an immigration agreement with any province that so requests.

Is this to mean that the territories may not receive a fair number of immigrants because they do not have the power to negotiate with the federal government? What if each province were to demand a quota of the immigrants equal to its percentage of the population of Canada plus an extra five per cent? Not everyone can have a five per cent bonus. How many people would we have to immigrate and how can this be divided fairly? Why should one province have this advantage over another, as in the agreement with Quebec? Is it just to allow the bigger provinces to grow bigger and the smaller provinces to decline in population?

The section continues to say that such an agreement, once concluded, could receive constitutional protection. The word "could" is extremely vague. Will they or will they not be protected and under what circumstances?

In section 95B, the federal government retains control over the national standards and objectives of immigration policy by establishing categories, classes and admission criteria for immigrants. This gives the federal government authority to delegate the immigrants to each province according to the agreed quota, but does not protect the province from receiving its quota of immigrants from the lowest category of immigrant classes and admission criteria.

A good example of this, I think, would be that if the federal government was not very happy with one province for whatever particular reason, it might send it a whole list of miners when the province was actually in need of doctors. It does not say what kind of divisions they are going to make and which immigrants will be sent to which province.

Quebec has made an agreement with the Canadian government that it will

receive immigrants proportionate to its share of the population with a right to exceed that by five per cent. This statement seems to be very solid, but how can the government of Quebec keep that number of immigrants if they are allowed, under section 6 of the Charter of Rights and Freedoms, to move out and take residence in any province? The Meech Lake accord protects this basic freedom. Therefore, how valid is the Quebec agreement with the Canadian government?

The accord is also to provide an undertaking by Canada to withdraw services, except citizenship services, for the reception and integration, including linguistic and cultural, of all foreign nationals wishing to settle in Quebec, with such withdrawal to be accompanied by reasonable compensation. What is "reasonable compensation"? The interpretation of "reasonable compensation" by one man may be in total contrast to the interpretation of another man. This clause will no doubt create a lot of work for lawyers and legislators.

This section of the constitutional accord has raised many questions in my mind. I feel I am a reasonable person and my concerns are also reasonable. I assume many other reasonable people will experience the same confusion and ambiguity within the accord that I have expressed in my concerns. If there are concrete responses to all my questions, I will be satisfied with the immigration clause, but if there is room for diverse interpretations, I would hope the government would attempt to make changes to the document.

We would urge committee members to question the Premier (Mr. Peterson) and the Attorney General (Mr. Scott) on their interpretation of the clauses covering immigration. What do they envision as the worst-case scenario resulting from the application of those clauses as it pertains to Ontario, to Canada? Mr. Fullerton has another area where we would ask for the same questioning procedure.

Mr. Fullerton: We would like to suggest to the committee that you quiz the Premier in relation to the clauses dealing with spending powers. Our concerns with respect to the amendments proposed for section 40 of the Constitution Act, 1982, recognizes that this is a complex section, dealing as it does with money. We all know that in our society money equates with power. We note the lack of a dispute settling mechanism that involves the legislatures. The money will come from the people. It always does. Governments, of themselves, create no wealth.

Is "reasonable compensation" perceived by the Premier and his resource people to be the amount of money with which a reasonable person would be satisfied? If reasonableness cannot be agreed upon, is it the unanimous perception of all the drafters of the accord that decisions on the reasonableness of compensation will pass to the courts? If this is to be the result, and our interpretation is that it will be, then it is our conclusion that legislative power has been lost, not only by the provinces but by the federal government as well, and this nation will be governed by appointed judges who are answerable to no one for their decisions.

Mr. McDonough would like to comment here on a historical parallel that struck him as an evolution that might be expected in Canada, given the terms of the accord.

Mr. McDonough: After the signing of the American Constitution in 1787, there was little power in the judiciary. All it did was simply pass judgement on people and their actions in accordance with the laws. However,

this changed in 1801 with the appointment of John Marshall as the Chief Justice of the Supreme Court of the United States of America. His influence as Chief Justice has, more than that of any other person, shaped the constitutional growth of the United States and the future of American law.

His most influential philosophy was the doctrine of judicial supremacy. Today, as Canadians, we must ask ourselves a very important question. Do we want to be governed by an appointed judge or by an elected representative of the people? Do we want an appointed civil servant, answerable to no one, to irrevocably change and shape our future? An old saying comes to mind: Quis custodiet custodes? Who guards the guards, or in this case, who will judge the judges? On the other hand, do we want a democratic Parliament, answerable to the people of Canada, to guide us from this point into the next century and beyond?

In this regard, too, Tina expressed apprehensions that are reflected in our brief.

Miss Laur: We have seen the example of what judges can do. The abortion issue is a prime example where reasonable people from across Canada are unable to make a unanimous decision with regard to the abortion legislation. Mr. Vander Zalm in British Columbia is strongly opposed to legislation allowing abortion clinics to spring up across Canada. Others are in favour of the Supreme Court of Canada's decision to allow abortions.

I myself would like to see this vital service available to the women of Canada. Let the women of Canada make a choice. Those who are violently opposed to abortions do not have to use the clinics, but those who want the service have it available to them. I find this very reasonable, but my friend Connor does not agree with my position. We are human, different people who have different ideals. Therefore, the majority must rule.

Unanimity is difficult to obtain in many situations. This type of controversy between the provinces and Ottawa may very well affect nominations to the Supreme Court. The federal government, in its interest to have abortion clinics in Canada, may refuse any names of people put forward by Mr. Vander Zalm who are opposed to the government's position on abortion. This parish pump system is inevitable. There must be an authoritative voice that will be able to break the stalemate between the federal cabinet and the provinces.

Mr. Fullerton will set out the conclusion we reached on the Meech Lake sections dealing with the judges and the Supreme Court.

Mr. Fullerton: Before I get to that, Connor indicated that he had some comments on what Tina said.

Mr. McDonough: As Tina said, I disagree with the present abortion laws that have been passed down by the Supreme Court, but it also must be noted that we are both reasonable people and have reasonably discussed this situation and we have come to no reasonable conclusion. We think this is another example of how the premiers will not be able to come to a reasonable conclusion on the same matters, presented with the same facts.

Mr. Fullerton: But come to a conclusion they must.

We prefer the pre-accord parliamentary system where judges adjudicate, legislators legislate and the supreme authority resides in a Parliament elected by the people and responsible to the people. That is not to say that

we are opposed to the enshrinement of the Charter of Rights and Freedoms in the Canadian Constitution and the provision that in this area the courts should judge whether these charter rights have been infringed upon on or abrogated by legislation.

You have listened to our arguments, and we trust you have found them reasonable. I will ask Connor to begin our summation.

Mr. McDonough: Our theme is that reasonable men and women do not always agree. On the evidence of Canadian history, as we read it, we see the need for allowing an easier amending flexibility in some areas, a flexibility that will allow for the alternative swings to and from centralization that have characterized Canada's evolution, a flexibility that can accommodate, without requiring unanimously constructed constitutional amendments, changes in such areas as Senate reform, judicial appointment, proportional representation and provincial creation. We feel that it is not reasonable to assume that unanimity will be achieved in those critical areas now expanded by this accord, areas covering the composition and role of the branches and levels of government now operative in Canada. Tina also agrees.

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Miss Laur: Yes, I do. Reasonable people, we suggest, would conclude that such a broadened unanimity requirement will not be met and that this Constitution will become, as a result, unamendable in those important sections, sections where action may well be required to improve the function of government in Canada and preserve the unique nature of our country. Such necessary action should not--we stress, should not--except in a very limited number of areas, require the unanimity specified in this accord. One can appreciate the charterist philosophy that gives rise to many of the accord's provisions, but we must also appreciate the common law evolution that sees beneficial changes evolving precedent by precedent.

One is fearful of too rigidly listing lest some good things be omitted and I would not want to omit our final comments, which will be made by Mr. Fullerton.

Mr. Fullerton: We would not want to omit good things, but we would want to omit those scheduled annual meetings of the first ministers with their predrafted agendas. They rob from the role, rights and responsibilities of duly elected MPs and MPPs. We can understand the political allure of such meetings for those involved in them. The signing of the Meech Lake accord by the provincial participants in the late hour, closed-door sessions in the Langevin Block provided, as we have indicated earlier, photo opportunities galore; champagne corks were popped, laudatory phrases filled the air and all was sweetness and light.

As provincial politicians, you know it will not always be so. There will be interprovincial squabbles and provincial-federal scrapping just as sure as God gave Ontario an industrial heartland that is the envy of Grant Devine, the maritime provinces their offshore fishing banks, the west its energy resources and Quebec its distinctness.

When the chips are down, when unemployment is up, when interest rates go through the roof, when tax increases threaten to beggar us all, when the voices of sectionalism and bigotry are heard throughout the land, when planned photo events turn into media scrums, when recriminations are hurled, when fingers are pointed in accusation, when voices are raised in anger and

acrimony, that is when a commanding voice is needed, a voice that can speak with decision, a voice that can speak for all parts of Canada. Co-operative federalism is fine, but this accord calls in too many places for 11 voices to speak for Canada. That may, in the long run, in too many instances, prove to be 10 voices too many.

Mr. Chairman and members of your committee, we wish you wisdom in your deliberations, resolution in your findings and courage in the presentation of your report. We thank the committee for its attention and are prepared to answer any questions you may have on the brief we submitted, on our comments today or on our recommendations.

Mr. Chairman: Thank you very much. I think it is fair to say that yours has been a unique, if not distinct, to use a common expression, presentation. If nothing else, we will certainly want to send the resolution of the Sarnia-Clearwater issue to the Minister of Municipal Affairs (Mr. Eakins).

Mr. Fullerton: We hope you will send it just as an example of the problems that may arise in boundary disputes. If they discover gold 10 miles north of the Saskatchewan border, I am suggesting to you, and if it happens to be right on the extension of the Saskatchewan-Manitoba border and it is just 10 miles north, you are into a real debate under the Meech Lake accord which would never be settled.

Mr. Chairman: I think it was a very useful example of some of the principles and issues we are into. I also want to thank you for the written submission you made and I just note for the record the 10 specific recommendations you made in that, which are at the conclusion of your brief.

With that, we will turn to questions. Mr. Eves, Mr. Offer and Mr. Breaugh.

Mr. Eves: I think it would probably be an understatement for me to say that you have presented a most interesting, thoughtful and well-prepared presentation here today; probably, I would say, the most thorough of any the committee has received. Various groups have touched on issues of specific concern, but I think you have touched on just about every section in the accord that could possibly have any controversy or ambiguity about it at all. I must commend you for a very worthwhile effort.

You have touched on everything from provincial powers to immigration, the Senate and Supreme Court reform, national standards, national programs, and the unanimous consent of the provinces to create new provinces and resolve boundary disputes. I want to zero in on a couple of areas, though.

Section 16: Your recommendation 8 asks for a specific reference to section 28 of the charter. We have had several groups before us, especially women's groups, and Professor Beverley Baines from Queen's University, I believe, made the suggestion that perhaps section 16 should protect all the rights established under the Charter of Rights and Freedoms without bothering to enumerate, in this case, presently two or another one or two--perhaps they should all be included in that protective clause.

Do you agree or disagree with such a suggestion?

Mr. McDonough: I would agree with that, that all rights of all Canadians should be protected whatever their province would be. I was just

curious when I was reading through that and noticed the clause that struck down section 28, guaranteeing men and women equality of rights, and all the women's groups are up in arms over this. But what about men's right? Men's rights are no longer guaranteed either.

It might be a little prejudiced on my part, but I feel that if the government of Quebec decides for certain reasons that you should have to do something because Quebec is a distinct society, and this will help to propagate the distinct society in Quebec, it could make a law infringing upon your rights, not only women's rights but also men's rights.

Mr. Eves: I think the point that you people make also about a well-educated and well-informed public is the biggest safeguard that democracy has. I think your suggestion with respect to process is certainly one issue that this committee is grappling with; not only the process that has gone on so far but just as important, if not more important, the process that will go in the future.

Mr. Fullerton: We might point out that in the dying days we discovered that for \$4.95 there was available, from the Queen's Printer, a complete Constitution, but it took us almost five weeks to discover that it was available.

Mr. Eves: Do you have further suggestions or ideas that you could make to the committee with respect to process and how you think this should take place?

Mr. Fullerton: I have one. In anything I have ever had to do with changes in a constitution or changes in a rule, they usually provided you with a divided sheet of paper saying, "This is what it is now and this is what it is going to be." I am suggesting that had that been done right at the beginning, there might have been greater understanding of the accord. It seems to me that is an easy document to do. Our MP in the area, Sid Fraleigh, provided us with the document. The library did not have it. We went to the library and asked, and the librarian went to Sid Fraleigh and said, "Can you get us one?" He provided us with one.

When we looked at the back it was great. It seemed to us: "Gee, there is only about five pages there. Surely to heavens you could put together a book that would not have to be shredded, in some kind of a simple form, and say it is available." Then it is the responsibility of the citizen, if he knows it is available, to have access to it.

Mr. Eves: I think probably there are another couple of good points you have made that are not in your written submissions. One is the point that any reasonable changes to clarify any possible ambiguities should be able to be made, regardless of what 11 people have agreed to and regardless of the apparently unanimous agreement they have that if you change one comma in this agreement, the whole thing will fall down. If that is the amount of trust there is among the 11 first ministers, I do not think the agreement is worth the paper it is written on to start with.

I think that your suggestion that the committee ask the Premier and the Attorney General to offer their analysis of the effect and impact of certain sections would be extremely beneficial to this committee and, quite frankly, I do not think it is one that we have explored to date.

Mr. Fullerton: Could I comment there for a second?

Mr. Eves: Sure.

1440

Mr. Fullerton: We watched with interest the Alliance Québec group which appeared before the committee. That group, as I recall, made reference to some statements emanating from the Quebec government area that raised questions in our minds: "Gee, is that really what Premier Peterson is saying too?" That is why we thought you might entertain inviting the Attorney General and the Premier to, say, interpret.

Mr. Eves: The Premier could also offer us some very unique insight as to the thought, the intent and the reasoning behind some of the language and clarify some of those problems for us. Along those lines, the thought has occurred to me also that perhaps Premier McKenna from New Brunswick, who seems to have very real concerns with this agreement, could attend before this committee and outline his concerns for us.

Mr. Chairman: Just before turning to Mr. Offer, I would just note that we have two other submissions this afternoon. A number of the committee members will have to leave at four o'clock sharp in order to get their plane, and I want to make sure that we have enough time for the other two. With that being said, Mr. Offer and Mr. Breagh.

Mr. Offer: I would like to thank you very much for this presentation. There is no question it touched on some of the very important matters in the agreement and you dealt with them in a very weighty and thorough way. I very much appreciate the presentation.

The theme of your presentation is that reasonable people might not always agree, and from that it seems that a great deal of your presentation was devoted to the whole question of the unanimity formula. I do not mean to detract from the other very important points which you brought up, but it seemed to me, from your presentation, that that was one issue which you dealt with at some great length.

From your perspective, the unanimity formula applies to things which may have--in fact, I will go further: will have---an impact on all the other provinces. We are dealing with fundamental matters in that particular unanimity formula, the creation of provinces. We have heard from others who were against the unanimity formula and indicated that, "Yes, it will have an effect on each province in terms of dollars flowing." The Supreme Court of Canada, too, is a fundamental institution.

My question to you is, with respect to those matters of such a basic nature in this country, should there not be that type of unanimity where all other provinces will be impacted upon? I would like to just expand upon why you think there ought not to a unanimity formula. I think that, in your recommendation, you have suggested this 7-50 type of process, but in matters of this nature, my question is, why not?

Mr. Fullerton: I would like Tina and Connor to both comment on that, but I would like to point out that what we said in the brief--as we recall what we said--is that in the new Meech Lake accord you have taken sections 41 and 42 of the 1982 Constitution and you have melded them. You have taken everything in section 42, which used to be under the provisions of the 30-70 and you have moved everyone of those so that they now require unanimity. In the document the Canadian Constitution 1982, there was a section 42. You are

amending that and you are taking all those things and saying there has to be unanimous agreement in those.

I think what we are saying is, that is too many. Section 41 probably covers those areas in which unanimity is required in order to provide peace, order and good government, but when you begin to include all the others that were in section 42, where there could be some debate and some majority vote, you have begun to tighten it up too much.

Mr. Offer: Just before Tina and Connor comment, of course section 42 calls the establishment of new provinces.

Mr. Fullerton: Yes, but 42 did not require unanimity. That is the point we are making.

Miss Laur: If it did not require it before, what made them decide that all of a sudden now we need that? It was working just fine before and now they have changed it.

We can see, as we have given the example in Sarnia-Clearwater, it is not going to happen. I do not think that the territories are going to be able to become provinces, because somebody is going to stick his hand up and say no. Someone might not be happy with one way that something is worded or something, and when you have 11 voices that all have to make a decision on one thing, maybe Saskatchewan is sitting up there thinking: "Well, gee, we'd really like that little part of the Northwest Territories there. I don't think I want to sign this, because we will never get it if we make it into a province." Somebody is going to object to it, and I think that if we are in a democratic country, as we are, and the majority rules, the majority should rule on this as well.

Mr. McDonough: I would like to comment on the question of when exactly they decided on this unanimity clause, because it was late at night when they finally came out of those closed rooms and said they had reached an agreement. I know myself, when I prepare essays late at night, as time goes on I start to ramble a little bit and I am not as precise.

Mr. Breaugh: We do that earlier.

Mr. Offer: No comment from Mr. Breaugh.

Mr. McDonough: A lot of contracts are settled late at night as well. You have to wonder if they were getting a little bit tired and on things they had been a little more adamant before, they decided not to.

To the question itself, I feel you cannot make a decision with unanimity, because it is not going to affect all of the country.

Also, if all Canadians are going to be affected, I think it should be a majority, not just that all Canadians should not have a decision that does not affect them, because in time you may have compromises, "OK, we'll vote for this if you vote for that." That Premier will say, "I really want this so I'll vote for this other decision, whether I really feel I should vote for it or not."

It is going to deadlock the first ministers' conferences when all the premiers gather around to discuss things. They are not going to be able to come to reasonable conclusions, because if someone adamantly disagrees, he is

going to say, "Forget it, I'm not voting for it," and that issue is right out and people are going to have to start making proposals to him. They are going to start giving him submissions, but they are going to have to give him a little broader ground in other areas to entice him to vote for it.

This is a democracy. Totalitarianism is when you need unanimity and there is this one decision made and it does not matter about all the people. It is a democracy. When we vote, as has been brought out earlier, the majority of the people decide who the MPP for Sarnia is going to be, not all of the people.

Interjection.

Mr. Chairman: I apologize. We really are going to be running into some time problems.

Mr. Offer: Thank you very much for going on with that.

Mr. Breaugh: Part of what we are going through is some scrutiny of the process, as well as anything else. I think most of us, in our more polite moments, would say that the process to date has not served us well or was inappropriate or, in our more accurate moments, would say this is the screwiest way to go about putting together a Constitution one could think of. It is not exactly true to say that 11 men locked themselves in a room and did this overnight, but it is pretty close to that.

We are concerned now that part of our job is to try to get a reasoned assessment of the impact of this agreement on as many groups as we can, so we have had learned professors come forward and give us their opinion and other people come in off the street and give us theirs and those who had an axe to grind and those who did not.

I think by the end of this process we will be able to sit and say, "As a package, is this a reasonable thing to do," but I do feel very strongly that one of the things that must be addressed now is that the process that has been used to date is no longer tolerable in a Canadian society like ours.

Part of the obligation this committee has is to provide some suggestions and to begin the process of setting up what will happen the next time the first ministers meet. Will it be just ideas out of the blue put on the table and bargained there?

I would advocate, and I would be interested in your response to this, that part of our job is to set in motion now a process for constitutional reform which makes sense to us, which provides as much access as we can, which gives the legislatures in Canada some say on it and which culminates in the first ministers meeting and deciding. From where I sit, this process has just been done backwards. That is the basic fault there.

1450

I disagree slightly with some of the tone I thought I got out of your presentation a bit. Others have said much the same thing, that disaster is going to befall. I believe this country can withstand almost anything. It has been through Pierre Trudeau and Brian Mulroney and it will live through this.

Miss Roberts: Ed Broadbent.

Mr. Breaugh: The next big challenge is Ed Broadbent. I thank you for the plug.

If there were no recourse from this, I would be really concerned, but I am aware, as everybody else is, that there are legislatures and the Canadian Parliament to go through, and when we are all through screwing it up thoroughly, there is a court system at work. It is not like we have to design the perfect model because we are at the end of the world and nothing can happen past today.

I have some hope, and I am encouraged frankly by the appearance of you three today, that there are others around who are not going to give up on this system, that the process is not going to stop now and that there are alternatives, ways to change this system. We are part of that way, and it is part of our job to design a process that serves the Canadian people much better than what we have had to date. It may just simply be that in Canada the idea of having a Constitution is new. The idea of people being able to insist on a constitutional right is relatively new. We are all on new ground here.

If I had two criticisms to make of this accord--and I do, and many more--they would be two things. There is not very much vision in this agreement. I find that disheartening. It may be typically Canadian and all of that, but I thought we could have come up with something a little bit more than that.

Second, there is too much finality in here. I would like to see a little more flexibility in here, because as it stands now, the flexibility that is in here is pretty much limited to one of our legislatures beginning to upset the applecart here. That is one way. Or the courts, of course, will get at it because, no matter how hard we try as politicians, we must admit that in the end we will have to write a law. After we have written it, every Canadian citizen will take it to court, if they want to, and the courts will have to rule on those laws. So the final interpretation is not ours, and we know that.

What we are looking for is--we do not have to even agree on what this accord stands for. We just have to come to some understanding that we are close enough that we know what we are talking about here.

I would be interested in your comments about the process from this point on.

Mr. Fullerton: If I can start, then I will let the other two pick it up. What scares me most is that first ministers' conferences, which are scheduled in there--I saw what happened to Mr. Johnston in Ottawa and I am not naïve enough to believe that if I stand up as a member of Mr. Peterson's party, for the sake of discussion, and say, "I don't agree with this document" and there is Mr. Peterson's signature on the back of the document, I have not done something to my political future, if you will. If enough members stand up, the party falls, the House falls.

I just do not like that provision. I did not vote for 11 men to set an agenda for Canada. I am agreeing with you 100 per cent. The process is flawed. The process has to begin with the representatives of the people, all of the people. I would like to see my MPP and my MP standing up and questioning the document. Then it goes some place. That is my personal reaction.

What scares me is that scheduled annual conference where those 11 men are going to come out and say: "We have agreed. Now we will go back to our

particular governments and get them ratified." Mr. McKenna will not have any trouble. Mr. Peterson, with a 95-seat majority, will not have any trouble. Mr. Pawley might. If I could ensure that there was only a one-seat majority in every province, I would be much more comfortable. I cannot ensure that.

Miss Laur: I would like to make a comment about before you get to this actual stage. When we talked about the lack of information, one of the things that scared me a lot was when I came to doing this presentation, I went to school and many different students said, "Why is your picture in the paper?" or whatever. I said, "I'm doing a project on the Meech Lake accord." They said: "What's that? I've never heard of it before."

I could not believe it. People do not know. There has not been enough information given. Maybe it was just the younger generation or people who were not following it, but I found that people did not generally know. They may have heard of Meech Lake before; they did not know it was the Constitution. They did not know what is involved with the Constitution, what it is, what it does for you, that it gives you your rights and freedoms.

I think that is partly due to the fact that there is not enough information on it. You cannot go into your library. I looked in my library for everything I could find on this and there was not a whole lot. You cannot open up a book and say: "OK, here is the Constitution. We get this right and that right," and everything all down and the amendments made to it. That was a real scare for me.

Mr. McDonough: As Tina said, when I told people at school that I was going to give a brief on the Meech Lake accord, they said, "Oh yeah? That's really neat. So when are you going to Meech Lake?" I said, "I'm not going there." They said, "Where is it anyway?" I said, "It really doesn't matter," and they would say, "Oh, OK." That would be the extent of their questioning.

I found most people there are totally uneducated about this. These are the people who are going to have to live with the decisions that are brought about by the Meech Lake accord. There has to be greater accessibility to information on the Meech Lake accord. There has to be greater education of the public and the youth in society today about the Meech Lake accord.

Mr. Chairman: You have really underlined one of the aspects of why hearings such as this are important earlier in the process, and that is a straight public education process. I know we have often talked about how, if you like, at the culmination of the 1982 process, some people had so much information they were probably sick and tired of the whole thing and just said: "Please sign it. Do whatever, but let us end all of this." We certainly have had the occasion where, I think, some people may have thought Meech Lake was an environmental problem as opposed to--and perhaps it is.

Mr. Breaugh: You said that, not me.

Mr. Chairman: But it is true that in terms of public awareness of just what is there, it is not the same as in a number of other instances.

On behalf of the committee, I thank all of you very much for coming today. We have very much enjoyed your presentation. The thoughts and ideas that you have put forward are, as in so many cases, from a number of different perspectives, and I think particularly of the one that relates to men and women of good will, of common sense, not always being able to agree. You ask, "How do we try to work our way through that?" So thank you very much.

Mr. Fullerton: Thank you very much, Mr. Chairman. There are just two things we would like to say. First of all, if it were possible to change Meech Lake to Constitution Lake, we would love that. We think it has a better ring. The other thing is, if you happen to run into Mr. Radwanski, who made the report on education, I would like him to meet my two students.

Mr. Chairman: Hear, hear. Thank you very much.

I might then call on Donn Korbin to come forward. We have distributed a copy of your submission, Mr. Korbin, and welcome you here today. I think so that we can make sure to give you plenty of time for your submission and questions, I will quickly turn the microphone over to you. Welcome.

DONN KORBIN

Mr. Korbin: Thank you, Mr. Chairman, and thank you everybody for giving me the opportunity to speak to you today. I would just like to introduce myself briefly. I provided a statement on my qualifications to the chairman. For several years I worked as an economist. I have worked as an economist in Saskatchewan. I have worked as an economist in the private sector in Ontario. I have worked as an economist for the federal government in the Department of Energy, Mines and Resources.

For the last several years, I have worked in a managerial capacity for a southwestern natural gas utility and have provided advice to the Ontario Energy Board on matters of rate design, contract carriage and storage of natural gas in Ontario. I have appeared several times before the Ontario Energy Board and I have also appeared before the National Energy Board as a witness in the recent natural gas surplus determination procedures.

I think it is clear from my qualifications that I cannot bring you legal or constitutional expertise. I only bring to you my concern as a citizen with the principles that have been embodied in the Meech Lake accord.

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I think, perhaps somewhat uniquely, I also bring some practical business experience from an industry which has experienced the conflicts and problems that result from the application of provincial rights in the area of natural resources. As some of you may be aware, the natural gas industry is going through an enormous structural change with deregulation, and there have been numerous controversies over the implementation of deregulation, over the access of eastern Canada to natural gas resources in Alberta and the question as to what extent Canadian needs for energy resources should be protected before such natural gas resources are exported to the United States.

I have also seen, as a result of provincial powers, an agreement called the agreement on natural gas pricing between the federal government and Ontario being transformed into something you would not expect from the reading of the agreement. Deregulation has been transformed into something very different, with some very serious consequences to Ontario and other people in eastern Canada.

My own experience with intraprovincial trade and in an industry which depends on intraprovincial trade leads me to question very seriously the practicality of greatly expanding provincial powers. I think one of the thrusts of my submission will be to suggest to you that this committee should consider very seriously these implications before you agree to such a document.

What I would like to do with the document is work through it briefly and highlight what I think are the key points and then be available for questions.

In my introduction, I put to you the position I hold, that the Meech Lake accord should be rejected in its entirety. I believe that a straightforward reading of the accord would lead you to conclude that it is self-contradictory; I believe it incorporates political principles which conflict with those underlying the Charter of Rights; I seriously question the incorporation of expanded unanimity agreements; and finally, I do not agree with the philosophy underlying the accord.

In outline, I will contend that the accord incorporates the following two conflicting political principles. The first principle is that Canada is composed of equal provinces and the second principle is that Canada is composed of two nations, French-speaking Quebec and English-speaking Canada. I believe it is the conflict between these two principles that leads to the ambiguities and different readings of the accord.

I also believe that the accord incorporates within the Constitution, in a pre-eminent position, the right of language-based communities, perhaps even the obligation for these language-based communities to override individual rights in order to achieve their collective or communal goals. As a citizen, I object strenuously to this very great limitation of the Charter of Rights, which I regard as one of the fundamental achievements of the first round of constitutional negotiations.

Finally, as I mentioned, the charter imposes unanimity provisions, particularly in reference to the powers of the Senate. I do not believe the powers of the Senate are such that we would want at this time to incorporate unanimity provisions in order to change them.

If I could turn to section 2, section 2 essentially tries to make the argument to you that the accord does incorporate these two conflicting principles, provincial equality and the distinctiveness and uniqueness of Quebec. If you read the accord, it seems to me that it states three fundamental things: first, that the existence of French-speaking Canadians is centred in Quebec, and this constitutes a fundamental characteristic of Canada; second, that Quebec constitutes within Canada a distinct society; and third, that the role of the Legislature and the government of Quebec is to preserve and promote the distinct identity of Quebec.

I submit to you respectfully that this amounts to recognizing Quebec as a French-speaking nation within Canada and that Canada is composed of two nations, one French-speaking and one English-speaking.

To support this argument, I look towards the definition of a nation provided in the Shorter Oxford English Dictionary. Basically, the definition of a nation is, "A distinct race or people, characterized by common descent, language, or history...organized as a...political state and occupying a definite territory."

The accord recognizes that Quebec and its people are distinct from Canadians elsewhere in Canada. The accord explicitly recognizes the distinction of language in Quebec, explicitly provides for a role of the Legislature and government of Quebec to promote a distinct identity and recognizes that Quebec is a territory upon which French-speaking Canadians are geographically centred. The combination of language, territory and government would seem to provide a foundation for an interpretation that Quebec is indeed a nation within Canada.

I also add to these very explicit recognitions of the distinctiveness of Quebec the implicit recognition contained in the words "distinct society" and "distinct identity." I think this broadly worded clause demands that we ask how the courts may view the constitutionality of new legislation if these amendments are in fact adopted within our Constitution.

Society can be defined as a "system or a mode of life...a harmonious coexistence...for mutual benefit" or an "aggregate of persons living together in an ordered community." In the future, when accord is required to determine the constituent elements of a distinct society that may be preserved and promoted by either Quebec or federal legislation, I submit to you they will have to consider Quebec's distinct history, ethnic composition, culture and institutions as well as its language, for surely these are the measures of what constitutes an ordered community and a mode of life that distinguishes a society. In essence, I think Quebec has been provided with the constitutional safeguards necessary to promote the development of a distinct nation within Canada.

I respectfully suggest to you also that if you accept those particular three principles of the accord, it follows that the province of Quebec is different from the other provincial governments. We have the fact that the Legislature and government of Quebec are charged with preserving the French-speaking nation in Quebec, and this will make the provincial government of Quebec unlike all others.

I think the distinctiveness of the role of Quebec comes out when you compare the role envisioned for the legislatures and the governments of English-speaking provinces. The English-speaking provinces are not charged with preserving or promoting a distinct English-speaking society or societies. Their obligations are in fact somewhat vague and basically refer to population, the centring of French-speaking population in the province of Quebec and the centring of English-speaking population in the remainder of the country.

It is not my contention that Quebec is not a distinct society, but I do ask, are there not other distinct societies in Canada? Is not Alberta a society distinct from Ontario? Is not Newfoundland a society distinct from Ontario? Yet, if we accept the fact that they are, we have to ask ourselves, why do they not have a constitutional obligation to promote and preserve their distinctiveness? Why is it the distinctiveness of Quebec that merits constitutional and political recognition? I submit to you that the only answer I can think of is that "distinct society" are really code words for "distinct nation."

I have argued to this point that the accord incorporates the principle that Quebec is a distinct nation. It is not my intention here to debate the merits of that position, but what I would like to do is explore the logic of accepting that position. Let us assume for the moment that is true. What sort of constitutional arrangements would follow from that? What constitutional arrangements do not follow from that?

I think it follows, first of all, that the province of Quebec should enjoy special status and that Canada should be viewed as a confederation of English and French Canada, each with its national identity. If so, if you accept this political vision of Canada, it would follow that the political framework of Canada would need to be renegotiated and a new framework presented to the people of Canada.

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Equally important is what is not implied. Equality of provinces is not implied and, in fact, this contradicts the acceptance of two nations and special status. For this reason, I submit that the accord is self-contradictory.

I would also like to submit to you that the Charter of Rights and Freedoms should not be subordinate to the communal rights of Quebec. It does not follow from the acceptance of these principles that the charter should be subordinate.

Of course, we have not had a debate in Canada as to whether Canada is two nations or 10 equal provinces. Rather than openly acknowledging these issues, I think what has happened is these conflicting principles are harmonized in practice by providing each province with a set of rights that are substantially widened, substantially enlarged, and basically unnecessary and inappropriate.

This expansion of power can be found in the unanimity principle in the amending formula, the nomination of Supreme Court and Senate candidates by provincial governments and the extended rights to compensation should a province opt out of a national program.

I have argued that in principle this is not appropriate. I would also argue that at the practical level we have to ask ourselves whether we desire the provinces to have this expanded role provided by the accord. I think my answer is clear, they should not.

I would now like to turn to section 3, which begins on page 13, where I deal with the Meech Lake accord and the Charter of Rights and Freedoms. Basically, in this section I argue that the Meech Lake Accord incorporates a distinctly different political philosophy than underlies the Charter of Rights. It incorporates a philosophy that we are a corporative state of distinct communities, and that individual liberty is a subordinate consideration to the rights of these communal groups.

I think this is a retrogressive step. I already believe the Charter of Rights is limited by the "notwithstanding" clause. I believe the "notwithstanding" clause is an undesirable and unfortunate clause in our Constitution. But I must also say I believe that by putting the clauses of the Meech Lake accord into the Constitution we have an even more reprehensible limitation of individual rights and liberties incorporated into our Constitution.

I also believe that because of the conflicts between the political philosophy of the accord and the political philosophy of the charter our courts will face perpetual challenges, with one party taking the position that the rights of the charter should apply and the other party taking the position that the rights of the charter are subordinate to the Meech Lake accord, and we will thus be putting ourselves in the hands of a Constitution which is inconsistent and contradictory.

I then ask myself, if you like, why was it necessary to subordinate the Charter of Rights to the "distinct society" provisions of the Meech Lake accord? Once again, the only answer I could come up with is that there was a reluctance to come to grips with the fundamental political issues as to whether we were two nations or 10 provinces. I think that by subordinating the

charter we are essentially moving in the direction of two nations. An explicit recognition of the uniqueness of Quebec and its special status would perhaps allow us to avoid subordinating the Charter of Rights to the "distinct society" clauses.

Earlier in these proceedings, it has been suggested that it would be desirable that section 16 was amended to protect all charter rights. I certainly would endorse that, but I do not believe that it could really be accepted by the signatories to the accord. I believe that would be contradictory to the principles embodied in the accord.

The final issue I would like to address with you today is the principle of unanimity. I think the principle of unanimity has obviously generated a lot of concern. It is a very stringent requirement and one we should not enter into lightly.

I think the accord has greatly increased provincial powers, and in combination with the expanded rights to compensation for any dissenting province, I think we have practically eliminated the possibility of a constitutional reform that may increase the power of the federal government in the future.

I also believe the Meech Lake amendments are such that it will be more difficult to remove the "notwithstanding" clause from the Constitution, because I believe the "notwithstanding" clause would always be a clause that would be negotiated away in a log-rolling type of agreement.

Finally, I would like to address the question of unanimity where the Senate is concerned. In our parliamentary system, the existing powers of the Senate in practice are at variance with the legal powers of the Senate. Senate reform has been discussed extensively, yet no resolution has occurred. Surely it would be most imprudent to require unanimous approval of changes to the Senate when we have a situation where practice is at variance with law. One province, combined with an intransigent Senate, could in fact create a constitutional impasse.

Finally, I would also like to comment on the legitimacy of these proposed changes in light of the process. In this section, I guess I have used some rather harsh language, but it expresses my disaffection with the process. Eleven men did negotiate a fundamental change to our Constitution behind closed doors and they have presented this accord as a fait accompli to the Canadian people.

Normally, when government takes action, the citizenry can throw the government out if it does not like these actions, but the combination of these fundamental changes and the changes to the amending formula requiring increased unanimity result in a situation where in fact I think it would be impossible to change the Constitution should we decide these changes embodied in the Meech Lake accord are unacceptable.

Thus, in conclusion, I would like to urge this committee to report back to the Legislature that the Meech Lake accord should be rejected.

I think one of the aspects of the Constitution is that there are many unintended consequences. We cannot envision today what may be argued about the Constitution five, 10 or 50 years into the future. All we can do is set forth principles that we would be satisfied could be used to provide a just resolution of conflict in the future.

I submit to you that the Meech Lake accord does not pass this test and therefore cannot be approved by the Legislature.

Mr. Chairman: Thanks very much for a very clear presentation. We have your full text, of course, which expands on a number of the points that you made, and I think we will move right into questions to make use of the time we have.

Mr. Eves: I will try to be brief, especially in light of the time constraints we are operating under.

I think all members of the committee share your concerns about the process this proposed constitutional amendment has undergone, and we will certainly be addressing that in our deliberations.

I gather that even if your concerns about charter rights could be satisfied--in other words, the all-encompassing clarification amendment to section 16 that has been suggested by several groups--and even if we could satisfy you with respect to the unanimous consent principle in its various places throughout the proposed Meech Lake accord, you would still be against the agreement on the fundamental basis that the "distinct society" clause presents to you. Is that correct, in essence?

Mr. Korbin: That is correct, sir.

Mr. Breaugh: I would like to run through some of the points that you made and get your response.

I understand how this accord was put together perhaps better than I had, say, an understanding of the 1982 round of negotiations, where there were a good many attempts to address what should be in the original Constitution of the country, in that this round is a little more the down-to-earth political reality of a nation being expressed in its Constitution.

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I view it in quite a different way than you do. I see that there is a series of subtle shifts--that is the way I would put it--in acknowledging that provincial governments today are much different from what they were even a decade ago, and I believe it to be a political reality that sooner or later has to be addressed. The Legislature of Ontario is a very different animal now from when I first became a member and, in terms of history, that is a very short period of time.

At some point in time the Constitution of Canada must reflect the political reality that there is a change in the nature of provincial governments, which means that the traditional relationship between the federal government and the provinces has to be reflected some time. It may not have done that in a way that you would like, but I think that is inevitable. Whether it happens now or 10 years from now, that is going to happen. I think in part it is a recognition too that even though it was said that the federal government is paramount, one provincial government managed to stand the government of Canada on its ear for quite some lengthy period of time, so the political reality was demonstrated.

Second, I am one of those who advocate that in some way, when we are finished with this, the supremacy of the Charter of Rights must be established. As a committee, we can move an amendment. We could do a referral

to the Supreme Court and get a court decision that does that, or we could simply delete those references in this agreement that we think infringe on the Charter of Rights, but in some way they must be put in their proper positions. Everyone says that. No one is satisfied with the politicians saying that, so I think that some further redress is required.

I am not as taken aback by the unanimity requirements as some seem to be. I read very carefully the fine print, which restricts the occasions when unanimity is required. My reservation about it tends to be that if we had resolved, for example, the problems of aboriginal rights and the territories, we could probably move with ease to the requirements in this agreement that actually need unanimity. I just think it is a little bit premature, and some other things have to happen before I will be comfortable, or as comfortable as I would like to be, with that.

But I do think, when you get right down to it, that if we do not all agree that fundamental changes to a limited number of federal institutions are necessary, it is not going to work. If you say, "Seven provinces and 50 per cent of the population say we ought to change the Senate and the rest of them do not," and you proceed to change the Senate, you have yourself some very real problems. If everybody does not agree that this is the right way to go on these limited items, it is not going to work anyway. It is kind of like the father saying, "We are all going to get in the car and go to the movie tonight," and someone else in the family saying, "But I am not going to get in the car." It does not matter what the father said. The whole family is not going to go to the movie that night.

So I think that in many ways practising politicians will have an easier understanding of this process than a lot of other people. There is a lot of crass politics in this, and although we say that 11 men hid behind closed doors and drafted this, I do not think there are very many people who practise the art and science of politics these days who do not understand what happened behind those closed doors. What we are dying to see is what actually did happen. We would like to see all the intentions, the players, who made the moves and what the compromises worked out were. Of course, one of the great drawbacks of the political leaders going behind closed doors is that they may actually have allies out here and they will never meet them, because we are not privy to the circumstances.

I am not as fearful of this document as many are. Obviously, you do not like it very much either. I think there is still some hope in here. I do not like it as a deal, because there are too many pieces missing; there is too little understanding in the nation. I would advocate, for example, that this deal will not work, no matter what the premiers and everybody else said, unless the Canadian people finally have some understanding of why they did these things. There is a whole lot of explaining that has to go on. I would be interested in your response to that.

Mr. Korbin: I think I agree with you in part, sir, but perhaps where you do not fear the unanimity provisions being introduced, I see parts of the Constitution having been modified and the unanimity provisions tacked on. The provinces now are instrumental in nominating Senate candidates. It could be argued that over time the Senate will become very much an instrument of provincial politics and the politics of provincial governments. Obviously, with the legal powers of the Senate, the provinces and their politics will play a very significant role in determining the attitude of the Senate towards new legislation in Canada.

We all recognize that the Senate has legal powers and it has practical powers, and whenever the Senate exercises its legal powers we are talking about constitutional crisis. The Mulroney government experienced this in the question of the patent law concerning--

Mr. Breaugh: The drug bill.

Mr. Korbin: --generic drugs. So we have introduced this unanimity requirement in order to change the relations of the Senate as an institution in a situation where I think you could safely predict that one day you will end up with a very serious constitutional crisis. You could have one province and the Senate basically stand off the rest of Canada, at least in a legal sense.

If a board of directors of a company entered into a contract where you knew the practice was at variance with the old contracting provisions and where you have multiple parties involved in negotiations, I think the board of directors of a company would be viewed as negligent and culpable 10 or 20 years down the line when that came back and resulted in an impasse. That is why I say you cannot possibly introduce unanimity provisions regarding the Senate when you do not have even minimal agreement on what the role of the Senate is in contemporary Canadian government.

Mr. Chairman: Mr. Offer with one question. I apologize, but our next witness is here and some people are going to have to leave at four.

Mr. Offer: With respect to your position of a two-nation type of theory, you have used and brought forward a particular portion of clause 2(1)(a) "that the existence of French-speaking Canadians, centred in Quebec...constitutes a fundamental characteristic of Canada." That clause, of course, says a great deal more than that. It does not say just that, but also goes on to say ".but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic." I am wondering, keeping in mind those parts of the section, how that impacts upon your theory of the two nations.

Mr. Korbin: I do not think it negates my theory of two nations. I think, in practice, what those sections recognize is that there is a minority group in English Canada of French-speaking people and a minority group in Quebec of English-speaking people. I think what it says is that in order to preserve the distinctive characteristics of Quebec, its French-speaking nature, its geographic centre for all French-speaking Canadians, the rights of English Canadians in Quebec will be subordinate to the communal rights of the French-speaking majority in Quebec.

Mr. Offer: What it might be saying is that a fundamental characteristic in all of Canada is that there are in existence French-speaking and English-speaking Canadians in all of Canada and we are recognizing that in all of Canada. We are also recognizing the fact that the French-speaking Canadians are centred in Quebec but are elsewhere in Canada; English-speaking Canadians are centred in the rest of Canada but are also in Quebec. And it is dealing with it in a very full way, but just recognizing, indeed, a fact of this great country, actually.

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Mr. Korbin: If that were true, I would ask in return why the provisions of the Charter of Rights and Freedoms, with respect to a

bilingualism which guaranteed the rights of French Canadians to be served in their language in English Canada with respect to their federal government, did not more fundamentally and more rigorously protect the rights of all individuals to be served in the language of their choice and allow them as individuals to preserve their own distinctive identity in whichever way suited them. That is why I feel that this in fact is a retrogressive step from the original clauses of the Constitution.

Mr. Chairman: I thank you for your presentation, and also, I think, for your preambular remarks. One of the areas that has come up on a couple of occasions has been the reference to interprovincial trade and various things that may or may not be happening to that. You have also raised a number of questions to which we really do not have any easy answers, but ones that we are going to have to reflect upon. We thank you very much for coming today and sharing your thoughts with us.

I would next ask Chief Charlie Shawkence of the Chippewas of Kettle and Stony Point Indian band to come forward. I welcome Chief Shawkence. I might just note that if you notice a few members disappear at four o'clock, it is not intended in any way as a slight. They have to get out to the airport and catch a plane. I do not want to take any more time, but to turn the microphone over to you and let you make your presentation, and we will follow that up with questions. There will be representatives from all parties here after four o'clock, but there will be a few who will have to quietly slide away. I turn the microphone over to you and bid you welcome to our deliberations.

CHIEF CHARLES K. SHAWKENCE

Chief Shawkence: [Remarks in native dialect]. That simply means thank you, shake hands, how are you and it is a nice day.

I did not prepare anything, like the rest of my ??youth group. You have heard my grand chief speak. I have not looked at their statements. You have heard my regional chief, Gordie Peters, speak. I watched on TV what I could watch. I got leave from the hospital today to come here. It is quite interesting.

I have lots of thoughts. I am going to speak from the heart here. I printed up a few things, if you want to pass them around. They are just topics I would like to speak on here. I just had these done. By the way, the secretary got mixed up. I wound up over at 195 Dufferin Avenue here and I was trying to find it. Nobody told me where to come, so that is why I am late. I apologize for that.

Mr. Chairman: That is quite all right.

Chief Shawkence: Bad communications.

I probably will say that the topic for discussion is called Canada's Constitution. I shall begin by saying I think it should be labelled Canada's conscience, because I have been told by the elders the things that are happening. The more I have been told, the more I research--with this oral history, you are only being told about these things--and as I research, I find there is no variance in what my elders have told me. You cannot change history. That is what I want to emphasize, how you guys have changed history with the coming of the Europeans.

Traditionally, the Indian people are the best statesmen; they are the

best politicians, as you know if you read history. We treated the Europeans well. I think if it were not for the Indian people, a lot of you would not have survived. That is all I want to dwell on. It will give you something to think about. That is why I call it Canada's conscience, because if it were not for us, you would not have a Canada today.

I was going to begin by asking all you people--I watched this and it is quite a forum--what your thoughts are, instead of you asking me. It is always on us to prove ourselves. We do not have anything to prove. It is you who are trying to make us prove something that we are not.

These are the things I ask. Why should we always have to go around proving ourselves in the courts of law? We have been portrayed as the bad guys. You enact laws and things of this nature, and everyone I meet says, "Oh, there's another one of them Indians." There are no other words I can use to describe it, and it makes you wonder.

So all these things go in my--I think about this and I think it is good all these good things are happening.

There are some things I want to remind you of. The Indian people went over to England. I was one of the chiefs who chose not to go there. There was a statement made there by Lord Denning which few politicians or judges even know about, and I think you should be reminded of it. He said: "You've come over here. There is nothing we can do here. It is Canada's duty. You go back there." I was looking for his statement, because I have a transcript of it. He said, "You go back to Canada." This piece of paper will be able to--"As long as the river flows, the grass grows green and the sun shines, so you can withstand any onslaught that you may come against." Those were his words. It is there. I have it someplace.

Anyway, I have to commend some of you fellows, particularly this man sitting here--Mr. Eves, is it? I liked your statement, sir. "Ten wise men," you said last Friday somewhere. That is what brings you to ask, what right do these guys have to decide on the fate of everybody?

In our council we have great discussions, great debate, and on what we think is right we will sort of have a referendum and send it out to people: "Is this what you want?" If we get an answer back, "Yes," and the majority wants that, that is the way we go in our council. We go with what the people want.

I guess there are things that I am very worried about. You hear about the free trade agreement. We signed an accord, a memorandum of understanding, in 1786--that is, the pre-Confederation treaties. That was after the royal proclamation. It is the very foundation of Canada, the royal proclamation of 1763. Then we had the Indian Act and we had the British North America Act, the BNA--whichever came first--and now we have the Constitution, which brings us to why we are sitting at the table today.

I could go on to the Indian wars from about 1750 or 1760, because I have tried to read all this stuff, I am very curious about what my elders have told me. As I told you before, as surely as I sit and research, there is absolutely no variance at all in what I find in the archives. Like everyone says, "The courts may have their day, but the historians will have their say."

You have to understand my feelings here, because in my time as chief I have approached a lot of federal members. I have been put on the civil

disobedience list, and I hope with my appearance here today I am not being followed around by the Ontario Provincial Police civil disobedience crowd. I have been put on that before. I am just saying what I think. Just because I spoke some harsh words to the minister at the time--I think his name was Chrétien--they followed me for two years, for what reason I do not know. I was speaking up for my people.

When we get into these wars of 1750 to 1860 and stuff like that, that is where many people went back and forth, tried to take over the European--and that leads us up to, you know what happened in 1760, the British North America Act, all this stuff and all these changes.

Then the thing that really disturbs me is the royal proclamation. In order to take over these reserves, which were set apart for our use and benefit in posterity, somehow they seem to enact legislation which supersedes what is our very foundation. It is like--I do not know how to describe them to you, because I have very limited education. All I know is from experience.

Anyway, in 1951 they decided to amend the Indian Act, and these great white fathers that ??had been in the Indian Act, so they sort of went together with the province and said, "We will amend this Indian Act so provincial law will apply on the reserves." To me, that is expropriation or appropriation of your rights. In order to have us surrender, you have to have a vote by the consenting members of the band, or the tribe, or whatever. This never took place. And before then, we trusted the Indian agent, or whomever it might be, to do whatever was best and then they sort of created a ghetto or something for us. We trusted them and they said, "You cannot do this and you cannot do that." They took away every bit of culture we had. I could go on and on and speak to you for two hours, I imagine. But these are the main points.

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They amended the Indian Act. These are things that bother me. Then there is free trade. I hear Mrs. McDougall on the federal side talking about free trade. In the pre-Confederation treaties we never gave up our rights in these things. That would have to be answered to within the province. What is going to happen with them? Is this going to supersede these things by a royal proclamation like we were talking about? You have heard section 91, section 24 and all of that where we have our rights entrenched.

Then we go on to 1944, which you all know about, and Camp Ipperwash. They appropriated our lands, even before they came to see my members. I have copies of the letters six months before they even proposed it to the Indian people. I s: "better to relocate a few straggling Indians and lump them together. They will be better off in the long run." Here we are. We are still here. The war is still going on, I guess. That was in 1942. They promised, "We will give you the land back after the war is over." These are the things we are faced with.

To me, these are the very things. I just do not know where to begin. There is so much. I guess the environment concerns me. I am very close to nature. I am concerned about the quality of the water. I have watched documentaries. I have satellite, so I watch all this stuff. It is very interesting. Once it really struck me about the quality of the water. There was a documentary about a captain who is going to retire. He was driving one of the biggest grain carriers from up north. He was going down along the river. They asked him, "What about the water?" He got down past Detroit someplace. He said: "Well, let me tell you what my thoughts are. I docked my

boat and threw out the anchor rope. Along came this rat and ran up the rope. He did not even wet the hairs on his belly when he ran across the water." Those were his thoughts on the water. So, I guess that says it all.

If you read history, some Indians down in the United States go back to the 1600s. When they took all the treaties and surrenders and bought little pieces of land from the Indians they gave them a little bit of money. "You will be neighbours like us. Be farmers. We will help you and give you little lumps of money." This is what is happening. I see a repetition of that by the federal government, not doing enough to really do the job. They just take a little hunk of land from you and give you a little bit of money. You do not succeed. You do not have the expertise. You go back and say, "We need some more money. We do not know how to farm." They say, "Well, give us some more land and we will give you some more money." So, in sum, they took the whole damned thing away from them. They have nothing over there.

I read the treaty through. I see where they surrendered their rights to the American boundary in 1807, and 1807 was the year that Tecumseh decided to go with the British. For the historians here, I have forgotten the medals, but I have them in the car. On my side of the family, I am a direct descendant of Tecumseh or the Shawnee family. The medals that they cannot find I have in my coat pocket outside in the car, if you want to see them, that King George presented to them. I have them here. They have been passed down, and they mean something to us.

As I say, 1812 was the very foundation of where Canada really started. I think it was called Upper Canada, was it not? They fought these great wars. They beat the Indians up in Mackinaw and beat the Americans who came down to Detroit and the Iroquois. They all helped the British--Detroit--they went over to Queenston and beat the Americans back over there. Just what would it be like if it was not for those people who formed this great Canada we have.

The 1965 welfare agreement: I will not speak too much on that. I can remember the days, sitting in a council meeting in 1967, when a former member of Parliament came right out with: "Accept this. Nothing will change." Now they are taking means tests; they make the elders sign their land away, their rights, where they do not have to declare their earnings. Some of them have a little extra income; it is very little. They supersede everything we have. I will not get into it, but we are going to make some recommendations to the social--I do not know who the minister is, but we are preparing a brief which we would like to see.

Fishing and the select committee on land drainage have ties to each other. Back then, the Progressive Conservatives formed a select committee on land drainage. I guess this involved fishing. It used to be called lands and forests, but in 1972 they had a committee. They roamed all over Canada, they went to New Zealand, they went to the United States, they went to the United Kingdom, and over there they picked up a process from the English people, where they give title, they had game wardens and stuff and they called it the Ministry of Natural Resources.

Their report came back, and I believe this is where all this encroachment on our rights came along. Somebody in the back rooms of the Legislature at Queen's Park decided in 1972 that they shall make this new minister called the Minister of Natural Resources. You guys are all members of the provincial parliament, you know how things go on in the back rooms. I have been going up and down there for--It is not what you see in front; it is behind where the deals are made.

I know all about it, believe me. I have been there since 1966. I have talked with guys and I sit in the back rooms. I guess you call it lobbying or whatever the nature might be. I think I know the system after working on the council. I will not say the ministers or these guys sign papers, it is done by somebody else; he signs things he probably does not know he is signing. Sometimes as chief I have to get letters out too, so that is all part of it.

Getting back to this land drainage, somewhere along the line they decided, like over in England, the old colonialism came out: "We shall control everything." That is when they started charging my people, in 1974, and we have been fighting over fishing rights with the Ministry of Natural Resources.

The Ministry of Natural Resources, in its report to parliament, said, "We shall have control over everything." If you guys go back and look at it, that is where I think this whole business--Then it said, "Reserves are separate and apart." The former Minister of Natural Resources, René Brunelle, admits there is some unceded land out there. I presented a claim on behalf of the Chippewa Nation back in 1980-81. They wrote me. I have all the letters here, stuff that I relate to.

There are some other things I have not written down here, on this Meech Lake accord, all these things. In my travels, I met a coloured fellow one time and I had him out fishing. We were sitting and talking about all the frustrations I go through. He said: "My good man, you know what I call that? I call it exploitation of illiterate men." I did not know what it meant, but I looked it up and I have a good idea now. Anyway, this is what it is all about.

One recommendation I would like to make to you people is that when you go back to these 10 wise men, or 11 as you call them, when you print this, because there are things printed in what we call 75-cent words; if we look them up in the dictionary, if there is one meaning, there are five of them. What is the real meaning? Print it so that we people who do not understand all those--I bet there are hundreds, thousands and millions across Canada who do not understand it. We want to know in plain, simple English what they are doing, because I do not think people really know what is going on. I have that right from deep down inside. Not too many know really what they are doing.

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I heard you say something about some judge. They make laws and, on the second recommendation, they become the laws of this land. I heard Attorney General Ian Scott, last December or a year ago, before they had the first ministers' Constitution, there was a meeting at the Westbury Inn and he was a guest. He said, "Boys, it is better to take half a loaf of bread than nothing at all." I do not forget those words.

I had an occasion to meet him last June. I did not bring my daily book with me where I make my dates, but I met him in Petrolia, Ontario. It was a really hot day, a Friday afternoon, and he was coming from ??(inaudible) Island. So I sat there and waited for him. We talked about this fishing. We talked about the same things I am trying to refer to--the royal proclamation that you cannot get these lands unless there is a surrender and all these things.

The thing that really disturbed me the most, we got talking about fishing and we got to fines. He said, "How much fine do you pay?" I said: "I really do not know. The last fine that a person paid when they were convicted was around \$300." He looked at me and said, "That ought to buy your licence."

What kind of attitude is that? To me, I am wasting my time talking to this man.

But I learned that he is trying to do something. He said, "How am I going to get the message across to the public about history, the true meaning?" I guess as I say to you, these hearings should be beamed into every classroom in Ontario as sort of an educational process to get really through to the Canadian public, because we have been portrayed as bad guys, and that is what you are doing in your court.

Yesterday, my band members went to demonstrate outside of Osgoode Hall. I do not know what happened. The Batchewana band won a case and the province appealed, because we beat you at your own laws. I do not know what the case was, I know nothing about it, but the decision is coming down today.

Our recommendations to provincial judges, that sit in these provincial courts, because I have been there--we have spent thousands of dollars on lawyers' fees, research, historians, people, telling them from the very beginning about history. They say, "All I know are the laws that exist today." They do not know about this. If they find a case where you have been found guilty, then it is "I will refer to that judgement. I will find you guilty."

So I say to the Attorney General, go back and teach these provincial judges history right from day one so they will understand it and get the Indians' perspective side of it, so that they understand. I know because of my band members.

You have heard about the raid on Kettle Point. I heard you mention it. I will speak to that. I want to ask you one question and I do not care who answers it. What day was the provincial election last year?

Mr. Chairman: September 10.

Chief Shawkence: OK, that is not hard to remember, September 10. I sat at home with my television and I watched Premier Peterson saying over the TV--and I have asked for his speech at different times, here and through Queen's Park, but I cannot get it. I went to CFTO TV and they said, "We do not keep track of that stuff." But I remember the high points of his speech. He said, "There shall be no minority group overrun by a majority Liberal government."

On September 27, 1987, my band members were overrun by the provincial police out on a lake, which we think is our own right. The Ministry of Natural Resources, with high-powered rifles, American game and conservation officers--they had bullet-proof vests on--intimidating our people. Is this an indication of what is to come for my people?

I think that is about all I have to say. If you want something, I will put this on paper. As I say, I have been in hospital for over a week. I just read history and it comes from here within, the things I see, frustrations. I really feel like I do not have to answer. You are here to hear a person's views, and if I offend you, I make apologies to no one, because I am speaking for my people, Joe and Gordie--I have seen the men crying at the last first ministers' conference when they failed to get through: strong men. They know what they are doing.

Mr. Chairman: In terms of any questions we do have, it is really to try to help ourselves in--

Chief Shawkence: I forgot. I had better mention to you all the duties I have as chief. There are about 1,200 of us in the Kettle and Stoney Points band. I am also the Grand Chief of the southwest district, of which I am chairman or whatever you call it, vice-president of the seven Anishnabek nations, who probably total about 1,000. I am chairman of the seven-band community futures. I also have a little business I run in the summertime. I have a little corporation where we bid on jobs and try to be competitive. We train our people in whatever skills they want to know.

This is no place to tell you that the Department of Supply and Services makes it pretty tough because of the type of services. You have probably heard that we bid on jobs and lose out by \$1,000. It is not what you know, it is who you know. I know, because of being there. It is, "You scratch my back and I will scratch yours." I cannot prove it but these things happen and I accept that.

What I really think is that we are the hewers of wood and stone and skin. What people do not see in us--you see in the very artistic paintings that we Indian people have something that is hereditary. We have survived off the land before and we have a natural instinct to work with our hands. In our training at Lambton College, they said that never before, when training and upgrading people, had they seen people adapt so quickly with their hands and become skilled, in a shorter time than anyone else. We Indian people have something to offer, instead of portraying us as those bad guys, breaking the law and doing this and that.

I guess I had better close off. There is sort of a joke here, with these Indians all standing on the corner with a little feather. Up above, there are always little captions saying, "Ugh": u-g-h. I have shortened that to u-g. If someone says, "Where're you going, Charlie?," I will say, "I've got another one of those UG meetings." He will ask, "What do you mean?" I say, "It's Understanding Government." Who the hell does?

Thank you.

Mr. Chairman: We will open it up to some questions. Mr. Eves?

Mr. Eves: I want to thank you for making this special effort to be here this afternoon. Sometimes we legislators in government tend to forget, especially in these hearings, that the Constitution is not just legal jargon; it is about Canadian people, and Canadian people's rights and freedoms. I cannot think of a better place to start than with Canada's original people.

I have expressed the strong viewpoint, which bothers me quite a bit, that all first ministers in this country think so little of native and aboriginal rights in their pursuit of self-government--which has been going on for many decades as I do not have to tell you--that they do not even put it on the agenda for the first round of constitutional talks, but think that issues like Senate reform and fishery rights in provinces should take precedence over a pursuit that has been going on by our native people for some decades.

The groups who have appeared before us so far expressing native and aboriginal concerns have indicated that, at the very least, what they would like to see as a first step is native and aboriginal rights and the pursuit of self-government added to the constitutional talks agenda for the next round.

Would you agree that may be a good first place to start?

Chief Shawkence: I think so. It was pretty disappointing when they said there was not going to be anything, again. As Joe Miskokomon said, dates do not mean much.

Speaking of fishing, we were here fishing in the inland lakes--I do not know where I put it, but I have archeological evidence here--800 or 1,000 years before Christ and after. I can tell you exactly in this area, we have been here at the very minimum of 10,000 years, and in the Ohio valley, at least 20,000 years. We have evidence of that to prove it to you. I do not want to get into it, but here is one thing that really bothers me. The very land you are sitting on surrenders 29 sections; it went from 27 1/2 to 29. I had some figures here, the discrepancy in the number of acres.

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When they first approached the chiefs, there were 400 Indians here. I forgot about this; I should have written it down, but when they came here they had interpreters. They started in 1818 to try to get the land from here. That is the next surrender or sale of land after the United States. Finally, in 1827 they got the chiefs together and they had interpreters. They made a deal. It took until two years later; 27 1/2. The chiefs agreed in principle, "We'll do that."

Three years later or whatever, it was called 29. When they cut the final deal, there were no interpreters there. It is my words; it was exploitation of eight illiterate men. They trusted. They shortchanged the Indians over 5,000 acres of land which they were supposed to have set aside, and--I forget how many--damned near over half a million acres extra they took. If you want to read it, you get someone to read it. It is 27 1/2 and 29. You read it and you will see.

Mr. Chairman: Mr. Breaugh?

Mr. Breaugh: I do not have a question, but I do have something to say. I think you are a very wise man and very well educated and your people are well served by you. I think your problem is that you understand governments too well. You know how they work.

I think what we are trying to do is to overcome more than a century of shame and embarrassment for many of us that agreements that were signed before this nation was a nation have not yet been fulfilled. I think there is enough determination in Canada now, and certainly enough skill among the aboriginal people, that we will come to a resolution of that. I have been in politics for only a little over a decade, which is not a long time, but I have learned that in politics nothing is impossible. You do have to be patient and you do have to wait, but circumstances change and they will change again. It is my hope that before we get all wound up with the Constitution of Canada, we will settle the treaty agreements we signed so long ago.

Mr. Elliot: I would like to thank you very much for coming and adding to three other very poignant presentations that were already made on your behalf by others.

In doing that, I have a question to ask because I am not in the happy position of some of the others; I have been in government for only six months or a little bit less. Unfortunately, it sometimes takes a little bit longer than that to get to know exactly how it works.

Having said that, I think those of us who have listened to your presentation are uniformly impressed by your sincerity, and what supprises a lot of us is the fact that you are willing to come back and talk to government representatives one more time, because you have been let down so many times in the past.

What I would like you to expand on a little for my own point of view is with respect to the fishing rights from your own band's point of view. I can understand that you resent the beginning of the licensing back in the early 1970s, for example, and that you feel there should not be any licensing. What area of fishing are you talking about with respect to the rights associated with your rights to fish?

Chief Shawkence: As I said, I made a statement to Premier Davis in cabinet in 1980 on the statute of limitations. As you know, we have one of the largest land claims rights. I took my claim from Goderich to the International Boundary Commission on behalf of the Chippewa nation, because the land is not mentioned. I will just refer it back to Mr. McNab. He worked for the ministry and is now working for Ian Scott in the Attorney General's office. He got up in court and said: "The Indians never surrendered or gave up those rights. There is no mention of it. They only sold the sections of land. They only sold the to-the-water right."

If you look at history, the Americans sold it to the water's edge, and their very existence depended on it. We were commercial fishermen for years. Why would you give something up that your very life, your existence, depended on? If you look at the licensing, do you think it is right for one man to have a licence for the whole damned lake when they put us on the quota system? It is to one Indian. It is a quota system.

We try to talk these things over but there is something that Robarts and some of these past men of the past governments--what they say to you directly and what they put down on paper is a different story.

I might like to remind you fellows that I never interfere with the voting; it is their own free choice. But this time I did write a message to my members and said, "Support my man, whom I am voting for," and what has traditionally been Progressive Conservative went 100 per cent Liberal. I guess I am here to collect my dividends. I invested in you guys.

I see something great going to happen here. I do not know where it is going to happen; maybe with the native community branch. But I just want to say to you, if the federal government is going to make a deal with you guys, we want to be part of that deal before it shows up. Do not let them enact legislation that is going to supersede our things and things like this. I do not know if I am answering your question.

Mr. Elliot: You are, in a way. What I would like to add is that in the other presentations we had a long time to question and get answers, and what came through to us very clearly, or at least to me, was that you are sovereign nation states and you really want to talk to the federal government.

Chief Shawkence: Sir, I will tell you what we want. Those other chiefs are scared to. It is a statutory obligation by the federal government. Education and health are one of the very things. We do not say that in our declaration. Then you will probably look at land treaties. It comes around to economic development. It is hard to define. They are scared to say this. I understand, but they are silent. They have been brought up this way. You say

something; you are supposed to understand. I am speaking from the people. I am probably representing a whole bunch of people. Elders who have been on council would love to get up here and speak to you guys. I am speaking for a whole bunch of people who cannot really speak. They say: "You tell them, Charlie. You know how to do it."

Getting back to your question, we are not here to say we want all the land back. We want something, what we think is--we are going to be here. You probably are not going to get rid of us. They are not the type of people who go around raising a lot of hell, but I suppose if I said, "Let us go and raise hell someplace," they could probably cause a lot of problems. But this is 1987. We use your car and we spend your money and all that good stuff. That is why I wore this jacket today. This is made on my reserve and I am proud of it. It is handmade. There is no other jacket like it. I would probably kill somebody if he took it from my back.

Mr. Elliot: The point I want to make is your people have a lot of communications that have to be taken with the federal government, but there are a lot of communications that have to take place with the provincial government too. There have already been enough of these described for us, very graphically, that we are listening. I am sure that over the next period of time, in those areas where the province can exercise some sort of control, there will be meaningful discussion with you.

Chief Shawkence: There are things I could not get into. I could describe the treaties because I have read them, from the American right up to Sault Ste. Marie, right from our reserve. They did not give up their rights to the lake. Then you go into Saugeen, to the north a bit. They were going to throw the chiefs in jail up there because they could not get the land. Eventually, they got their hunting preserve up there, 3,600 or 3,000 acres. They go on up north, all down through there, right up to Sault Ste. Marie, where they bribed them. I know they threw those old chiefs back in jail. If you read history, you will find out about it. They would not sell their land because they knew the land was getting more valuable and they had to have things on paper. It is as simple as that.

The Robinson-Huron treaty, if you read it, says, "We want the same as them at Kettle Point, hunting and fishing." It does not say that here because the men trusted the signatories. They trusted them, and it is not written down. I have been told by my elders, "You go and find it." The more I research, I more I find through research. I could have got a whole bunch of things there I could have read to you what professors think of the premiers, but I do not want to embarrass you.

Mr. Chairman: Chief Shawkence, you made reference to the problems with fishing and with the Ministry of Natural Resources. Is a resolution coming to that? Is there something we should be taking back?

Chief Shawkence: The federal government simply refused to sign last year in our Indian commission office. We have meetings there. I simply refuse to go because I see it as nothing but a smokescreen. Nothing is done there. It is just sort of, whatever you want to call it. There has to be some--like I said to the judges, we have asked for moratoriums until we discuss these treaties and go over them. I guess really deep down inside, there is no government in Ontario or Canada that ever wants to admit that we never surrendered these. That is the bottom line. It is time to get out the books, like Dave McNab, the head researcher, and tell them that maybe some of us know. He got right up and said, "They never sold the land."

As I said, why should we have to prove to you? It is up to you to prove how you took that land that you never owned, by enacting legislation, by amending legislation; pass the buck, back and forth. "Oh, that is a federal responsibility. Oh, that is a provincial responsibility." I have been up and down there too many times. It gets frustrating.

I got all worked up laying in the hospital bed and I said, "What am I going to do." Somebody said, "Gee, you got arthritis, Charlie, but your lips are flapping pretty good." I said, "Do'nt worry, I will think of something to say."

Mr. Chairman: We certainly hope you will not be in the hospital for very much longer and we appreciate the fact that you came from there to be with us this afternoon and to set out a number of thoughts on these different issues. As you have noted, and as others have noted, we have had three or four presentations from a number of your colleagues. Certainly, for those of us who are new in the Legislature, there is no question that we have learned a great deal. I suspect that for those who have been around longer, it has reinforced a number of concerns they have had about how we have handled the whole question of aboriginal rights, the treaties, lands and so on.

We want to thank you very much for coming today. Thank you for your thoughts and we will certainly take those with us as we deliberate on what we are finally going to say in our report.

Chief Shawkence: Thank you.

Mr. Chairman: That closes our meeting.

The committee adjourned at 4:13 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

MONDAY, MARCH 7, 1988

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Lupusella, Tony (Dovercourt L) for Mr. Morin

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

From the Women's Intercultural Network:

Adolph, Rheba

Shariff, Firoz

From the Nishnawbe-Aski Nation:

Louttit, Lindbergh, Deputy Grand Chief

Cachagee, Bill, Chairperson of the Wabun Tribal Councils

Mosquito, Rosie, Chief of Bearskin Lake Band

Imai, Shin, Legal Counsel; with Iler, Campbell and Associates

Individual Presentation:

Johnston, Hon. Donald J., MP for Saint-Henri-Westmount

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Monday, March 7, 1988

The committee met at 2:05 p.m. in committee room 1.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good afternoon, ladies and gentlemen. Before launching into the presentations this afternoon I think it is in order that we put on record the fact that since our last session our legislative researcher, David Bedford and his wife, Sue, have received into this world a charming, bouncing daughter, Riiko. I know you will join me in extending our congratulations to the Bedfords at this happy event. I think we all feel that we have shared in it over the last month or so of constitutional discussions.

Mr. Breaugh: Who says this committee work is useless to citizens?

Mr. Chairman: That is right. It is a happy event. On that positive note, if I could invite the representatives from the Women's Intercultural Network, who are here with us today, to come forward to the table. They are Rheba Adolph, Helen Flannagan and Firoz Shariff. I assume that one person is not here. Helen Flannagan is not with us. Fine. I understand you are both members of the executive committee of the intercultural network.

We have received a copy of your submission. Our procedure is simply to let you make your presentation, and then we follow up with questions. So perhaps without further ado I will turn the mike over to you.

WOMEN'S INTERCULTURAL NETWORK

Mrs. Adolph: I am Rheba Adolph. This is my colleague, Firoz Shariff. What we would like to do today is to begin by telling you something about the Women's Intercultural Network, and to continue with some concerns we have around the Meech Lake accord. To conclude our presentation we will submit our recommendations. We will introduce ourselves as we come up.

Mrs. Shariff: Hello, I am Firoz Shariff. I am a member of the planning committee on the Women's Intercultural Network. I am a part of the Aga Khan Ismaili community here in Toronto.

This is the response of the Women's Intercultural Network to the 1987 constitutional accord, entitled "A Matter of Fairness."

On June 3, 1987, the Prime Minister of Canada and the 10 provincial premiers met at Meech Lake and signed an accord which, if implemented in its present form, will affect deeply the rights of Canadians. The membership of WIN has serious concerns in this regard.

WIN, the Women's Intercultural Network, is an organization composed of women from different cultural backgrounds whose emphasis is on promoting communication and information exchange on issues, projects and programs of a nonpartisan nature relevant to women of diverse cultures in Ontario and in Canada. One of the major objectives of WIN is to sensitize governments and to facilitate their understanding of current issues of interest and concern to

women of different cultures. It is within this context that WIN has examined the 1987 constitutional accord, or the Meech Lake accord, and offers its views.

In looking at the process in order to achieve this goal, our organization feels that it is important to request input from the Canadian public, and we applaud the Ontario government's commitment to conduct hearings on this most important constitutional development. We hope that such hearings will be conducted fairly and that the government will receive and consider those suggestions and recommendations that will be made.

We deplore that, to date, Canadians have not been given a real opportunity to discuss the issues presented by the accord in an open forum, and we trust that in Ontario a new standard will be set. On this note, I invite Rheba Adolph to take over.

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Mrs. Adolph: I would like to begin the presentation here by discussing or presenting the concerns that our organization has about the Meech Lake accord. Our concerns, in general, revolve around the following five issues.

The first is the protection of the equality of all Canadians. It would appear from section 1 of the accord, dealing with the recognition of French and English as fundamental characteristics of Canada and identifying only Quebec as a distinct society, that there is a potential for the denial of rights of many Canadians. Since 1971, Canada has had an official policy of multiculturalism. Why is this not recognized in the accord? What is the implication of characterizing one society as distinct? Why are women, multicultural groups, natives, the disabled and other minorities not similarly identified?

Our second concern revolves around the delegation of the federal power of immigration to the provinces. Women's Intercultural Network is concerned about the transfer of immigration power from the federal government, firstly to Quebec and eventually to the provinces. In particular, we are worried that, given the wording of the accord, future immigration policy can be made in secret with no input from the Canadian public.

Moreover, provinces will be able to set their own criteria for immigrant admission and general integration other than citizenship services. We are therefore concerned that different criteria may prevail from province to province, with the result that some immigrant groups and refugees may be excluded from admission to any given province. This tool could effectively be used to weaken the multicultural component of any given province.

The third concern revolves around the national shared-cost programs in areas of exclusive provincial jurisdiction. Women's Intercultural Network feels that the emphasis on national objectives to be met by the provinces if they opt out, rather than upon national standards, has the potential for fragmentation of services for different criteria to be adopted from province to province. Moreover, it is unclear from the accord how the federal government will ensure that even the minimum of national objectives will be met. We are concerned that, following the accord, some provincial programs might be substandard.

Our fourth concern centres on the Senate and the Supreme Court. Our organization is of the view that an important constitutional document which

purports to deal with the vision of Canada should take into account that any appointments to the Senate and/or Supreme Court of Canada reflect not only geographical interests; they should also reflect the very real demographic makeup of Canada, whose vast majority of people is made up of women, natives, members of multicultural groups, the able-bodied, disabled, old and young, among others.

Finally, we would like to address our concern around the amending formula. Full consensus in Canada in the past has not readily been obtainable. The amending formula in the accord goes too far, as it will, through its unanimity provisions, effectively all but eliminate any significant constitutional reform in the areas set out in section 9 of the accord.

Our recommendations: Because of the concerns cited above, Women's Intercultural Network recommends that the accord be amended as follows:

1. To reflect that the Canadian reality recognizes the existence not only of French and English but also of other multicultural groups and of the native population.
2. To state clearly that nothing in the accord is to be interpreted as affecting those rights and freedoms set out in the Canadian Charter of Rights and Freedoms.
3. (a) To ensure that the federal government remain seized of immigration policy; (b) to ensure that any provincial or federal-provincial discussions on immigration and on setting criteria for immigration be discussed in an open forum.
4. To amend "national objectives" in section 7 of the accord to "national standards" to be monitored by the federal government.
5. To add that Senate and Supreme Court appointments should reflect the appointment of individuals from groups to whom equality rights have been extended under section 15 of the Canadian Charter of Rights and Freedoms.
6. To maintain the pre-Meech Lake accord amending formula.

Our final recommendation and conclusion: The recommendations set out above represent the minimum that the Women's Intercultural Network considers necessary to protect minority rights in Canada. Nevertheless, our organization is cognizant of the fact that our recommendations may not all be politically acceptable.

We therefore urge the government of Ontario at the very least to act to safeguard those rights and freedoms which were fought for over a lengthy period of time and which are now enshrined in the Canadian Charter of Rights and Freedoms. If the supremacy of the charter is not confirmed in the Meech Lake accord, Canadians will wonder what is the value of constitutionally protected rights which can be cast aside whenever 11 individuals choose to enter into a contractual agreement to that effect.

This, we know, cannot be the intent of the Meech Lake accord or the intent of the Premier of Ontario (Mr. Peterson). We trust that in Ontario we will take a leadership role and correct the misconception that has been created that the charter may be overridden by the Meech Lake accord. This misconception, in our view, amounts to an egregious error which must be rectified to ensure a continuing faith in the constitutional process and in our governments.

Mr. Chairman: May I just ask you one point? I suspect that a page was skipped, page 3, headed "The Goal." I wondered if you wanted to read that for the record so that we have it as part of the Hansard. It seems to me you made some fundamental points there.

Mrs. Shariff: Sure.

WIN believes that the fundamental goal of Canadian society should be the equal recognition of all components of that society, whether those components are English, French, native or cultural minorities, men or women, disabled or able-bodied, of any particular age or religious persuasion.

It is for this reason that WIN applauds the fact that attempts have been made to have Quebec become a voluntary participant in the constitutional framework. The inclusion of Quebec and the acknowledgement of French language rights are of fundamental importance to the makeup of our country and should be recognized as such. WIN's position on the Meech Lake accord is definite on this point. Our organization, however, is concerned that the rights of other participants in the Canadian mosaic not be diminished in the quest to clarify the rights of any particular group.

Mr. Chairman: You have touched on a number of issues and, at this point in our proceedings, certainly those are ones that other groups and organizations have also touched on. I think a number of the points you make have been expressed by others as well.

To start the questioning, with respect to the immigration issue, what is here in the agreement in a sense goes beyond what has been happening of late. What is it that you see in what is there that is particularly worrisome for your organization? I wonder if you could just expand a bit on that.

Mrs. Adolph: Our concerns are in the area of citizenship programs which would be universal and global in Canada, so that an immigrant who comes into Quebec, say, would eventually be able to move within the country as a whole, having been versed in at least one of the major languages. I am not so sure and I think our group is not so sure that will happen--we are not saying it will happen--but what we are saying is that there is no protection for this not to happen.

Our second concern is that provinces could limit the kind of immigration that brings value only to that province and perhaps not to other provinces.

Mr. Chairman: So the concern there would be that you would not, obviously, want to see anything which might limit the selection process on the basis of things covered by the charter, by human rights codes, that sort of thing.

Mrs. Adolph: Limit the selection process and also limit the usefulness of all immigrants to Canada.

Mr. Chairman: Thank you.

Miss Roberts: If I might turn your attention to page 8 of your presentation, paragraph 4, the fourth recommendation, you indicated that "national objectives" should be "national standards" to be monitored by the federal government." I wonder about the word "monitored." Could you just expand on that for a minute, please, if you would?

Mrs. Adolph Our concern is that educational, medical and day care programs, all the programs that the provinces will enforce, may not be enforced on a Canadian basis with the same standards throughout all the provinces. We feel that if there were national standards to which all provinces must accord with some sort of commissioner or some sort of committee that sets these standards and requires feedback from the provinces as to how these programs meet the standards and whether they are meeting the standards or not.

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Miss Roberts: If I might, Mr. Chairman, it is something that is not in existence today. Then you are suggesting an entirely different level of committee or commissioner to monitor what is going on in every province just to make sure that the provinces are meeting objectives. If you had "objectives," it would work just as well as "standards."

Mrs. Adolph: We are not certain that "objectives" would work as well.

Miss Roberts: OK. The other thing I would like to ask you about is that you made some comments in your presentation with respect to 11 individuals getting together to change the accord. Have you put your mind to how we can amend our Constitution and our charter from time to time? Have you ever thought about a different process, a more appropriate process?

Mrs. Adolph: There is always the example of the United States, where the state legislatures are able to ratify amendments. There could be a direct national referendum. That is another possibility.

Miss Roberts: I see. Thank you.

Mr. Breaugh: On a couple of occasions in here you use the word "misconception." Many of us are struggling with what exactly this means in terms of an impact on the charter. I think that is probably the predominant question. Part of the difficulty is that, as Canadians, we are not familiar with constitutional processes. It is a relatively new one in Canada, so we are relatively unsure of whether one takes the accord and reads it in isolation or whether one is supposed to take the accord and try to fit it into the previous Constitution and see how it fits there.

You use the word "misconception." I think you are probably trying to reflect the fact that a number of people have said that nothing in this accord takes away any rights that you have had previously. By using the word "misconception," I take it you agree with that, but you are unsure.

Mrs. Adolph: We are unsure of the wording because it is not stated as such. For example, section 16 says that what has to be interpreted must be consistent with the charter and section 27. Section 27, from my understanding, is more of an interpretive formula. It brings guidelines and consistency with multicultural rights, but it does not state so in the accord.

Mr. Breaugh: So basically what you want is one of two things: Either there would be something in this agreement which states clearly that the charter is not impacted by anything in this agreement or, as the only other option that I can think of, some court would make a ruling on that. The little hooker that is in here is simply that these days, no matter what we say, it is now going to be subjected in a much more direct way to scrutiny and to rulings by the courts. So one of those things has to happen before any of us really

knows the answer to that question. I take it you would advocate either of those two solutions to it, would you?

Mrs. Adolph: Yes. I would certainly advocate a clear statement if there is an impasse or one has to weigh the balance between the charter and the accord. Also, our group was toying with suggesting as a recommendation that the government submit the accord to the Supreme Court for some sort of ruling.

Mr. Breaugh: OK. One other little thing I have here is an old problem that all of us in politics face, and that is that whenever you get up to thank people in the crowd, you almost inevitably forget someone. It seems to me that that is part of what has happened with this agreement. In attempting to address one problem--that is, to get the province of Quebec to be part of, in a legal sense, this constitutional package--the people who drafted this accord strove to kind of turn their attention to them, and they did so; but in doing so, they forgot to mention several other people.

Now, they say, "That was not our intention"; they did not mean to imply that any ethnic group, any handicapped group, aboriginal group or anybody else they had mentioned previously in the first round of constitutional discussion was in some way excluded by these agreements. But the question for most of us is: How come? It does appear that in certain parts of this accord they were mindful that it was necessary to include everybody or some would be left out, and so they chose some words carefully in some of the sections which made it clearer than it is in other sections.

I would be interested in your response to that. Before you start, to be fair, I cannot see us writing a Constitution which goes through the complete list of every group that we can think of in Canada and says, "Everybody is in." It seems to me much simpler and better to say, "Everybody has equal rights; therefore...." But I would be interested in a little bit of embellishment around your concerns of that nature.

Mrs. Adolph: Sure. Thank you. Two issues. Number one, our group certainly applauds the bringing of Quebec legitimately into the Constitution. Although they are legally in Canada, it seems that the province was not too thrilled with the previous constitutional arrangements; so we certainly applaud what has been done.

Our concern is with the exclusion; when there is an exclusion of one third the reality of Canada, which is the multicultural reality, and only two realities are stated, the French and English, we feel the courts may interpret this as the intent.

Mr. Breaugh: Could you embellish that a little bit? I am struggling with this notion that some groups were excluded. I understand they were in the sense that they were not specifically named--maybe that is a legitimate concern and it may well turn out to be in front of the courts--but I would be more worried if I saw that somebody was actually, by words, excluded from this agreement. I do not see that. They are excluded by means of not being named. That is my hangup.

Mrs. Adolph: Would that not be an indication to judicial interpretation that the fact that two are mentioned means that these two have priority over everybody else? In that sense, exclusion means secondary status.

Mrs. Shariff: If we go back to page 5, midway through the first

paragraph--we are looking at section 1--once again I think what we are trying to do is we are trying to clarify that since 1971 Canada has had an official policy of multiculturalism. Why is this not recognized in the accord? What we are saying is that by mentioning French and English as the fundamental makeup of Canadian society, we are not officially recognizing the other third, as Rheba Adolph said, the cultural minorities. Multicultural should come to mean English, French and all the other cultural groups. Why should English and French be separated? That is number one.

Two, why is Quebec identified as having a distinct or special status while other cultural groups are not mentioned at all? Therefore, we have three standards in Canadian society: the English, the French and the rest, which is not mentioned at all. We want equal status for all three groups. I would not even say three groups really. Multicultural should come to mean one. English is a culture as much as Italian culture is. French is a culture as much as Portuguese culture is. Therefore, we at this stage should strive to achieve equal status, one society, and that is Canadian, rather than separating and giving a special status to Quebec and thereby giving a secondary status to the others.

Mrs. Adolph: I think what disturbs us is that if it is the intent of the accord framers to have equality for all the cultures, it is not stated. We would just like to see it stated. We believe you when you say it is. I cannot imagine anyone not believing that is your intent. But will people know that in 100 years, as they look through this in trying to interpret some of the conflicts that come up?

Mr. Breaugh: I will leave you with this. The problem that I am having with this is that the way you see it is obviously different than the way the people who drafted it see it. The conundrum that we are in is, you would make it almost impossible to put forward an amendment to a constitution if every time you moved the amendment you had to say, "Well now, whenever I move an amendment to the Constitution of Canada, I have to make sure that everybody in this nation sees it in exactly that light, and I have to name them all specifically if I want them all in." So it becomes difficult to do that.

I appreciate your problem. The thing that bothers me is that you may be right, because when it goes to court, a judge may say, "Well, maybe there is an inference of levels in here in that some were named in the first round, then some did not get named until the second round and some may not get named until the third round." Your point is legitimate. It is a question that we are trying to balance of whether this thing is looked at as a package integrated into the first set of constitutional negotiations and the first Constitution, or whether there is something different that might apply.

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Mrs. Adolph: Yes, and just as a follow-up, in 50 years when a justice is interpreting this and does not see everything written in--

Mr. Breaugh: Exactly.

Mrs. Adolph: --or the recognition of Canada as a multicultural nation, not just a nation of English and French background, the justice would say, "If that was the intent of the framers, why didn't they say it?"

Mr. Breaugh: Yes.

Mr. Offer: Just to carry on with that line of questioning, with respect to the concerns of the different levels you have indicated, you have briefly touched upon section 16. What, in your opinion, is the impact of section 16 where it specifically states that nothing in sections 25 and 27, basically the aboriginal rights and the multicultural heritage type of interpretative provisions, shall be affected by the section 2 type of discussion? I am wondering how you can say on page 5 that this has not been recognized in the accord when I think a lot of people would say that section 16 is an explicit recognition in dealing with the particular concerns you have brought forward.

Mrs. Adolph: You will have to bear with me because I am a lay person. My reading of the accord is not a legal one nor in any way a particularly educated one.

Mr. Offer: No, I just want to get your--

Mrs. Adolph: It is my understanding of section 16 that it does not abridge charter provisions 25 and 27. It is my understanding of charter provision 27 that it is mostly interpretative and the guiding principle that applies to the charter and not particularly to the whole Constitution. If it does apply to the whole Constitution, what I would like to see is a statement of that in the accord. I am not sure that brings the accord in line, in harmony with an interpretation of multiculturalism.

Mr. Offer: We have heard representations that specifically section 27 and section 2 are interpretative provisions, as opposed to the type of rights-giving sections that appear very much in the Charter of Rights, and that how these particular things are going to be interpreted is up to the courts to make the final decision on. But the fact is that section 27, section 2 and section 25, of course, are brought into the same type of pot under section 16.

Mrs. Adolph: Would it not be clearer if the accord stated that these equality rights are substantive rights and not interpretative rights?

Mr. Offer: Would it not--

Mrs. Adolph: Would it not be clearer if the accord were to state that multiculturalism is a substantive right and not a guide to how rights are to be interpreted?

Mr. Offer: To answer your question with a question, if that is the concern, then would it not be that what you are looking for is a change to section 27 of the Charter of Rights, that the concern is not necessarily with the Meech Lake or Langevin agreement, but merely with section 27 of the Charter of Rights and that it should be changed from an interpretative provision to a rights-giving type of provision.

Mrs. Adolph: A substantive provision?

Mr. Offer: Yes.

Mrs. Adolph: I cannot answer that. It seems to make sense on the surface, but I guess we are talking about the accord here. Also, it is my understanding that although it has been stated that the accord and charter are

equal, what happens when there is an imbalance or when one is tested against the other? Which has supremacy? We do not know. From my perspective, probably the best of all possible worlds is to state it in both documents.

Mr. Harris: I congratulate you on the presentation. It is short, brief and to the point, which appears to be difficult to do when we get into constitutional matters. I also share many of the concerns you have put forward. I want to ask you about two of them.

I have been away from this committee for two weeks while I have been making recommendations for the Treasurer (Mr. R. F. Nixon) to increase money for everybody. I want to get back to the point that my colleagues have discussed briefly and then I want to ask you about immigration.

I have not had my mind around this for the last couple of weeks, but the French-English is with reference to language not with reference to culture, and I believe there is some attempt in the Constitution--and as I say, I have not been reading through the wording for the last two or three weeks--but it seems to me that there is some attempt to talk about the official languages of Canada being French and English.

Perhaps in doing that, it implies culture as well, in which case I understand what you are saying and I accept your concern. Do you have a difficulty with French and English being the two official languages in Canada?

Mrs. Adolph: No, not at all. Whether it is in Quebec City, Calgary, or Golden, British Columbia, we are a country of two national languages. I have no difficulty with that. I think our difficulty is in stating that we are a country of only two cultures.

Mr. Harris: I understand.

Mrs. Shariff: Also our difficulty is with not having identified in the accord women, multicultural groups, natives, the disabled and other minorities. They are not similarly identified as Quebec is. Rather than the French language, Quebec.

Mr. Harris: Why is Quebec distinct then? Because of the French culture?

Mrs. Shariff: French culture.

Mr. Harris: Or is it because of the predominance of French-speaking Canadians?

Mrs. Shariff: Both perhaps, are you saying?

Mr. Harris: So you do not have a difficulty if it is because of the predominance of English-speaking Canadians. You have a difficulty if it is because of a predominance of French culture and singling that out.

Mrs. Shariff: I think the difficulty is with identification of all particular groups or any particular group as being above the others, regardless of--

Mr. Harris: But you would not have a difficulty that it is distinct because of the predominance of French-speaking Canadians.

Mrs. Shariff: No.

Mrs. Adolph: Actually, what we would like to incorporate are three realities: the English, the French and the multicultural.

Mr. Harris: But you want French and English when you start talking cultural to--obviously they should not be mentioned at all. It should be multicultural regardless.

Mrs. Shariff: Multicultural society.

Mr. Harris: But there are many English-speaking people when you talk about English culture. There could be 50 or 100 or 300 cultures that they bring. They just happen to speak English.

Mrs. Adolph: I do not think any of us have trouble with French and English as languages. Bilingualism is the official policy of the country, and we agree with that.

Mr. Harris: This distinct society is undoubtedly causing problems in a number of areas and how it is going to be interpreted. We have heard that--

Mrs. Adolph: What we would like to see is some statement of interpretation.

Mr. Harris: Your suggestion of the charter reference may be the best recommendation we have heard. We have heard so many interpretations in three or four areas of the Meech Lake accord. People say, "Well, if this is the understanding, it is OK," but we hear so many groups saying, "Well, that is not our understanding." One lawyer says, "This is what I think will happen" and another says, "This is what I think will happen."

Perhaps the charter reference is the way to go on those. If we are all comfortable that is what it means, fine; if we are not, it has to be changed. Surely that makes sense before it comes in as opposed to after.

I just want to ask you one other thing on citizenship.

Mr. Allen: Before you proceed, could I have a very small supplementary on the point you are just leaving?

Mr. Harris: I would be delighted if you could help clarify anything I am saying.

Mr. Chairman: Please go ahead.

Mr. Allen: It strikes me that we are using the word "culture" with respect to multicultural groups, with respect to the English-language phenomenon in Canada and with regard to the French-language phenomenon in Canada. If we use words at least with a little bit tighter definition--would it not be true to observe that section 2 does not use the word "culture" anywhere? It simply says that the fact that some people speak French in some places more than others and English in other parts more than others is a fact and, second, that Quebec constitutes a distinct society, not culture.

A society is a much more complex phenomenon than culture and can embrace many cultures. You really do not have a problem, I gather, with the wording that is there. You just want somebody to say that inside this Quebec society

and inside this other--whatever it is, whatever the rest of the country is--there is a multiplicity of cultures.

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Mrs. Adolph: Yes, that is exactly what it is. I can give you an intuitive definition of "culture," but certainly not an empirical or scientific one. "Distinct society" is probably more specific, but then what does it mean?

Mr. Harris: On immigration, you talk about the two aspects of it. It is the second one I want to talk about. "Moreover, provinces will be able to set their own criteria for immigrant admission"--then the second part--"and general integration." We have not heard a lot about this. One of the concerns that concerns me as well is, if the province is handling the integration, is it doing so in the interest of the province or of the country? Is that what your concern is?

Mrs. Adolph: Yes. What we are frightened of is that the concern will be in the interests of the province as opposed to the whole country. From my own perspective, and I had a lot to say in the writing of this one, I am a social worker. I work in a very large community hospital and I see all kinds of languages, all kinds of cultures and societies walk through the doors, and I know that all the children of these people will have access to all the facilities in this province, but I am not so sure that all their parents have access. I think that limits ultimately the educational standard of the children. I would hate to see that differ from province to province.

Mr. Harris: I would too. I think many of us have concerns about a Parizeau interpretation of what that allows Quebec to do, to give us an immediate example, both in integration and in interpretation of the "distinct society" clause.

I thought it was a good presentation. Thank you very much.

Mr. Chairman: Perhaps I might, on behalf of all of us, thank you again for your presentation. As Mr. Harris has underlined, you have put together a good number of points in a very succinct way which, believe me, for a committee is joyous to behold. We thank you very much for the time and effort and for sharing your thoughts with us today.

Perhaps I might now call upon the representatives of the Nishnawbe-Aski Nation: the deputy grand chief, Lindbergh Louttit; the legal counsel, Shin Imai; I believe, as well, the chief of the Bearskin Lake Band, Rosie Mosquito; and the chairperson of the Wabun Tribal Councils, Bill Cachagee. Would you please come forward.

Chief Louttit: Good afternoon, Mr. Chairman.

Mr. Chairman: Good afternoon. Please proceed, and if I have not introduced someone whom I should have, would you please do that. If you would like to make your presentation, then we will follow up with questions.

NISHNAWBE-ASKI NATION

Chief Louttit: I want to welcome the opportunity to come here and speak with the people of the Ontario government and also to talk to you about this Meech Lake accord, but before we do so, I would like to

introduce myself. My name is Lindbergh Louttit, deputy grand chief, Nishnawbe-Aski Nation, also chief of the Abitibi reserve in Ontario. To my immediate right is the chairman for the Wabun Tribal Councils, Bill Cachagee, from Chapleau, Ontario. To his right is Rosie Mosquito from Bearskin Lake; she is the chief there. Since our legal adviser is away, we brought Shin Imai. Our legal adviser is Michael ??Sherry.

First, I would like to ask Mr. Cachagee to give you an introduction to the Nishnawbe-Aski Nation, what it is and where we come from.

Mr. Cachagee: Thank you, Chief Louttit. Mr. Chairman and delegates, thank you for letting us have a few moments of your time.

First of all, I guess this word "distinct" has opened up a lot of eyes and ears. I had trouble interpreting that word myself because the first word that entered my mind, as an Indian, was "extinct," but it was not mentioned there, so I am thankful for that. -

Introduction: The Nishnawbe-Aski Nation is the political organization which represents the interests of the 45 Cree and Ojibway communities of Treaty 9 and Treaty 5 in northern Ontario. Those communities have a total population of about 25,000. The Nishnawbe-Aski Nation territory, as defined by the treaties, takes in nearly two thirds of the province of Ontario.

Participation in the constitutional process: The Nishnawbe-Aski Nation was an active participant in the political process leading up to the Constitution Act, 1982. The act includes section 35, which guarantees aboriginal and treaty rights. The Nishnawbe-Aski Nation supports the Assembly of First Nations' position that section 35 protects the unstated right to aboriginal self-government. After 1982, the Nishnawbe-Aski Nation participated in the four first ministers' conferences on aboriginal rights. While the FMC of 1983 resulted in some useful amendments to the Constitution, the FMC of 1987 ended in a deadlock on the matter of self-government.

The 1987 FMC and Meech Lake: The 1987 FMC on aboriginal rights was hampered by the Quebec Premier's regrettable decision to boycott the meeting. Also, negotiations were made difficult by the single focus on the matter of aboriginal self-government. This focus made tradeoffs difficult; tradeoffs might have involved matters of concern to the federal and provincial governments, such as Senate reform, constitutional recognition of the Supreme Court of Canada and jurisdiction over immigration.

The Meech Lake meeting followed close on the heels of the FMC, but the two forums could not have been more different. At Meech Lake, proceedings were closed to the public and Quebec was a full participant. More important, the federal government was prepared to consider tradeoffs in relation to a host of issues in order to achieve the principal objective, the integration of Quebec into the Canadian Constitution.

Overall view of the accord: Of course, the Nishnawbe-Aski Nation supports the general effect of the accord, which is to integrate Quebec into the Constitution. However, in view of the special relationship between first nations and the federal crown, the Nishnawbe-Aski Nation is concerned about the extent to which the accord weakens various federal powers. As a matter of first nations' solidarity, the Nishnawbe-Aski Nation is concerned about how the accord reinforces the "club" of provinces by freezing out the Northwest Territories and the Yukon in terms of the provincial status and the power to select senators and Supreme Court judges.

It is the position of the Nishnawbe-Aski Nation that aboriginal representatives should be invited to an FMC before the Meech Lake accord is finally ratified; in fact, the Nishnawbe-Aski Nation is in a process of a legal opinion which argues that such an FMC is required by section 35.1 of the Constitution Act of 1982.

At this time, I would like to turn this over to Chief Louttit.

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Chief Louttit: In view of introducing new provinces to Canada, we disagree with the process by which this is done. We believe that it should be done with the federal government, and not with the idea of having seven provinces agree to what destiny these provinces want to go to. We totally disagree with this process. We believe it should be done between the people of Canada and those people who want to have a new province.

For example I use the Inuit people who live in the Arctic. Why should they be torn apart by 10 other provinces? Why should they not just deal with the federal government? Why should Prince Edward Island which is nowhere near the Arctic have a say in whether the Inuit people should have a province or not, when they very well could have one? They are not attached in any way, shape or form, nor is Nova Scotia, New Brunswick or those other provinces. Quebec and Ontario and those other provinces might have some say, but we disagree with that process. It is not justified, even though we are all Canadians.

The other topic that I want to talk about is the weakening of the federal power. This process weakens the federal power in programs that are delivered to native people, programs such as health, education, policing, justice, those types of things. Those programs are being taken from the federal government and given to the province to be distributed to the native community, and the province takes a chunk away to administer that money.

Right now, it is coming from the feds directly to the native people. The province has no mechanism in place to directly give moneys to the programs on native reserves. There is no mechanism in place, and they cannot legally do it. They are trying to give us high schools in the north right now, but here is our reserve that is 30 square miles ??in a chunk and the reserve is on one corner. They want to put it over on this corner, outside of the reserve boundary, because they have no legal mechanism within their government to put money in there.

Mr. Cachagee: In regard to some of the programs that I guess the federal government hands down to the provinces to administer, I have difficulty sometimes with trying to update a program to the needs of the Indian people, let alone downsize it to reduce the deficit at the expense of the Indians. We are not the sole contributors to this deficit.

Whenever we go to the province and ask for the needs, there are either cutbacks or the famous saying: "That is not our responsibility. It is a federal responsibility." When the federal government turns over the authority to the provinces to administer various programs, if it does not have 100 per cent authority to administer this, the provinces use this fallback position, "It is not our responsibility." Yet they are not shy to receive 100 per cent of the funds for the administration of these programs.

The ultimate goal of the first nations is how I interpret the Indian

self-government. In time, we would like to deal directly with the federal government on a one-to-one basis, whether it be through Treasury Board, as long as we get this program delivery to meet our needs. The federal government is responsible for that, and we would like to have that in place at the band level. This is the only problem that I find. The provinces say, "That is not our responsibility." I hear this time and time again and I am getting fed up with it. Something has to be done about it.

Chief Louttit: The other thing I would like to talk about here is the constitutional conferences. We want to be involved as first nations. We do not want to be left out of any decisions made about this country. After all, we are the first nations of this country and we have been left out of Meech Lake. They do not want us. It is not a good decision made by the people, leaving the first nations out. It is our land and resources that built your country. It is with trade for education, health. Let us talk about education. To give you an example how we have been left out, of the Nishnawbe-Aski Nation of 25,000 people, how many thousand do you think are children? There are just under 2,000 kids under 16 years old who do not go to school. They do not go to school.

We are supposed to trade our resources for health and education. You take our resources from this country that you live on and thrive on. Our resources built this beautiful city, the resources from our nation. Yet, you continue to leave us out of any major decisions that are to be made about this country and how it should be run. We want a piece of that. We want some say in these different things. It concerns our children and our health and our wellbeing. These things are very important to us, and we want to be there when you make those decisions.

We have people at the Assembly of First Nations who look after this, our leaders. We recognize them, as a nation. I forgot to mention at the beginning, I do not know if those papers came in yet from our office, there are a few other things in there that I probably forgot to mention. As long as they are written, you have them. There may be a few other things that our people want to add before I make other comments on the constitutional conferences.

Chief Mosquito: Mr. Chairman and committee members, I too would like to thank you for the opportunity you have given the Nishnawbe-Aski Nation to present some of our concerns with regard to the Meech Lake accord. The comment that I would like to make at this time is with respect to the constitutional conference, which Lindy Louttit has just discussed. I would to expand upon it.

With respect to the constitutional conferences there are actually two areas of concern that I would like to bring to your attention at this time. There is a third point which our lawyer, Shin Imai, will explain to you. The first concern that we have with regard to the constitutional conference is that we feel the Meech Lake accord should provide for a future first ministers' conference which will deal with the aboriginal constitutional matters which have been unfinished. That is the first point and that is a very crucial point to the Nishnawbe-Aski Nation. That is the first point I want to put across.

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The second point is that the Meech Lake accord provides for two first ministers' conferences per year for an indefinite length of time. We feel, as the Nishnawbe-Aski Nation, that when those first ministers' conferences are being held, if the issues being discussed at those conferences directly impact

on the aboriginal people of Ontario and of Canada, they should be included in those first minister's conferences. It may not be all of them, it may only be some of them, but what we are saying is, we feel we should have a direct involvement in those conferences on matters that directly affect our lives.

The third point we wanted to bring to your attention, I would like to make a few more comments about later.

Mr. Imai: As Chief Louttit said, I am sitting in for Michael ??Sherry, who is a lawyer for the Nishnawbe-Aski Nation. He sends his regrets. Unfortunately, he is in Moosonee, somewhere near James Bay, I hope not lost. The point is whether it is proper to proceed with the ratification of this accord without calling for a first ministers' conference to which aboriginal people are invited. The argument, as I understand it, goes like this: If you look at section 35.1 of the Constitution, which is an amendment that was made in 1984, it provides that when section 25, section 35 or section 91.24 of the Constitution are about to be amended, then there has to be a conference. I will quickly read the section for you:

"The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 'of the Constitution Act, 1867,' to section 25 of this act or to this part,

"(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

"(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item."

It clearly provides, when there is going to be an amendment to any of those sections, that there should be a conference called to which aboriginal peoples are invited to participate. The question then is in section 16 of the proposed amendments which mentions those sections 25, 35 and 91.24. The issue is whether that section, which basically says the proposed new section 2 does not affect those sections, brings it within the purview of 35.1.

On the face of it, a section which says that the sections covered in it are not affected by another section, would not appear to come within the purview of another section that says you have to call a conference when you are amending the first section. I think, if you go through the Constitution, every word becomes extremely--I am sure you have heard days and day of this--every word becomes a battleground in a way. There is nothing that is certain. Certainly a section which says that section 2 does not affect the 25, 35 or 91.24, itself, I think, can be a point of dispute.

To illustrate this, I have just gone through the various Constitution Acts and for a point of illustration I would like to show you the variety of ways in which people have described, have put in a section which says another section is not affected, or that the powers relating to another section are not affected by another section. It is all very complicated, but let me go through the wording.

There is something in section 1 of the accord, which is section 2, that says, if you look at subsection 2(4), "Nothing in this section derogates from the powers, rights or privileges of Parliament," and so on. You have "nothing derogates."

Look at section 7 of the Langevin accord. It says, "Nothing in this section extends the legislative powers of the Parliament." You are saying this section does not extend it. If you go back to the Constitution Act, 1982, subsection 16(3) says, "Nothing in this charter limits the authority of Parliament or a Legislature." So far you have that it does not derogate, it does not extend and it does not limit.

Section 21 says, "Nothing in sections 16 to 20 abrogates or derogates from any right." Section 22 says, "Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege." Section 25 says that the aboriginal rights mentioned in that section are protected from the Charter of Rights. It says that the Charter of Rights "shall not be construed so as to abrogate or derogate." This is a new one. It is "not be construed so as to abrogate or derogate."

The next section, section 26, says, "The guarantee...of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms." Now we are into "denying the existence." Section 27, which you have probably heard a lot about, the multicultural heritage section, says, "The charter shall be interpreted" to preserve. Section 29 on separate schools says that the charter does not abrogate or derogate from rights.

Section 37.1 says, "Nothing in this section shall be construed so as to derogate." Now it does not say "abrogate"; it just says "derogate." It says "construed." It does not say "abrogate or derogate." Section 92A of the amended Constitution Act, 1867, on natural resources says that nothing in this section "derogates from any powers or rights."

You have a tremendous range of ways to word the various sections that say, "What we are doing here does not change these rights here." Of all these ones I have mentioned, not a single one says, "This section does not affect this section," which is section 16. We have had "abrogate," "derogate," "limit," "does not extend." We have had "should not be construed to derogate." We have "should not be construed to abrogate or derogate." We have "should be interpreted." Not a single one says "affect."

The point I am making is not that there is any finality or that we all know what those different ways of wording it are but that it indicates there is doubt as to the effect of what appears to be a very straightforward section saying, "This section does not affect this section." It is a battleground, as with everything else.

Mr. Chairman: Perhaps that is why the lawyers keep smiling as we continue on through constitutional reform.

Mr. Imai: If you could command your lawyers to clean up the Constitution so it has uniform terms, maybe it would be more straightforward, but it is a battleground. The whole point of having section 35.1 in the Constitution, the amendment that was made in 1984, was to ensure that when there were changes potentially to the aboriginal rights section, at the very least the groups concerned would be invited and would be able to participate. Even though the section does not provide that they have a vote, they would at least participate in the very important word-crafting that has to go on.

What has happened is that in section 16 you have now a certain set of words which I concede on the face of it does not come within the purview of section 35.1, but I think the argument is that even those words should be looked at and that there should be a conference to fulfil the constitutional

requirements in order to ensure proper negotiations are conducted to put the most effective words into the Constitution.

Chief Mosquito: You can see why we asked Shin Imai to talk about this, because I myself am not familiar with the legal, technical terms. I guess the point, simply speaking, that we wanted to raise was that with respect to the Meech Lake accord, Mr. Imai, I believe in his legal, technical terms, has explained that yes, there was a provision within the Constitution for aboriginal people, and that provision will not be affected by the Charter of Rights and other parts in the Constitution. What Nishnawbe-Aski Nation is also saying is that before the Meech Lake accord is ratified, a first ministers' conference should be convened or some kind of forum should be provided where we can also ratify the Meech Lake accord and that will address the concerns we have.

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OK, committee members might be sitting here and wondering: "Well, why do they want that? That provision has been made within the Constitution." I think what we want to illustrate to committee members at this time is that yes, perhaps you might think that Nishnawbe-Aski Nation does not trust the governments in power to date, and that is exactly what we want to bring to your attention at this point. Nothing in our history has shown us or convinced us to trust the governments in power today, including the federal government and the provincial government. Basically, that is the reason we would like to see future first ministers' conferences involving the aboriginal people at that table, particularly in matters and only in matters that affect aboriginal people. That is basically all I had to say. Thank you.

Chief Louttit: I think I might add that those matters she talks about as the land and the resources, the air, the water--all those things affect us.

The other thing I want to mention to you is that the Nishnawbe-Aski Nation respectfully submits the following recommendations for the consideration of the Legislative Assembly select committee, and you have those on page 11, I believe:

1. The Ontario government should reinstate constitutional funding to the first nation organizations, such as the Nishnawbe-Aski Nation.
2. The Ontario government should adopt and advocate the view that a first ministers' conference with aboriginal rights on the agenda must be held before the ratification of Meech Lake.
3. The Ontario government should work with the first nations to make self-government the number one item on the constitutional agenda in the first ministers' conferences that follow the ratification of the Meech Lake accord.
4. The select committee should take on aboriginal self-government as a top priority after it reports on Meech Lake.

I again want to thank you for having us here. We hope that you take some of our recommendations and take a good, serious look at them, because they are serious to us. They are our land and resources that we created for your good looks.

Mr. Chairman: Thank you very much for the brief and your comments.

As you know, to this point we have had several submissions from a variety of native organizations, and certainly a number of the points which you have made today underline points that were made earlier. It was an innovative legal point that I do not believe we have heard before which is intriguing in terms of subsection 35(1) and section 16, and that certainly is pause for reflection as well.

If we could turn, then, to questions, I start with Mr. Breaugh. I have Miss Roberts and Mr. Harris.

Mr. Breaugh: OK, a couple of quick points. We have discussed with other groups what might be done in terms of trying to establish a first ministers' conference on aboriginal rights in the foreseeable future. There seems to be not quite unanimity about how important that is or the timing of the matter. I am rather attracted to the notion you are putting forward here today--"Take your time, but do it before you ratify Meech Lake"--and I want to focus on that just a little bit.

One of the major problems that I and several other people have with this is that should this accord get ratified in its present form, it then makes very difficult attempts to come to an agreement about aboriginal rights, for example. One could read this accord and say that if one player decides he does not want this agreement to proceed, he in effect blockades it; and if that is not exactly correct in this accord--because there are some limitations and qualifications about where the vetos apply--then in the political sense it is correct that there will be some horse trading, and I have no doubts that there will be. There is lots of evidence in this accord that a fair amount of horse trading went on at Meech Lake, where different premiers said, "If you put this in the agreement, I will agree to something else," or "If you take one part out, it meets our needs."

I would like you to address just for a minute some of your concerns about how important it is to resolve, either totally or in part, the question of aboriginal rights before the ratification process of Meech Lake takes place.

Chief Louttit: The number one thing is Quebec. We recognize that, in the way we recognize all people who have come to this country.

The Meech Lake accord does not reflect enough on aboriginal people, the first nations of this country. I do not have enough time to explain everything to you, what we would like to see and what we could discuss in this forum, but certainly I could request more time and come back with a paper that would make more recommendations. We made a few small recommendations here.

Mr. Breaugh: Maybe I can help you out a little bit.

Chief Louttit: Yes.

Mr. Breaugh: Some groups have essentially said: "We were frozen out of this process. If it goes through, we will be frozen out of any further process. But it does not matter, because we are going to be off to the courts anyway, and time is not as important as some other aboriginal groups thought." For example, the Senate committee said that by 1992 we should have a first ministers' conference to resolve aboriginal rights. Some thought that was important; some felt it was irrelevant, frankly, because that is not going to be the vehicle whereby aboriginal rights are settled. It will be the courts who do that.

I would be interested in hearing, because in your recommendations you did make a very specific point of saying, "Settle the aboriginal rights questions first, before you ratify this accord," which I find a very attractive notion. It might give somebody a little incentive actually to do something. But there is not total agreement, I am telling you, from the aboriginal groups that have appeared before the committee as to how important that is.

Chief Louttit: It is extremely important to us. Again, we are two thirds of this province, our nation. Two thirds of the resources that lie in this nation, in this province, are our nation. Therefore, looking at those square miles of resources that are out there that are going to be taken and not be given back to us, that is how it is going to end if we continue this process.

Let us settle that first before we go back and talk to these people in the federal government. Let us settle it. Let us see where we all stand. We want to be fair. We have been more than fair. There are a lot of questions here. Go ahead.

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Chief Mosquito: I guess as I understand it, the question you might be asking us is, how important is it to settle aboriginal rights before the ratification of the Meech Lake accord?

I agree with Lindy Louttit: It is very important and it is very important to us. We are aware of the time frame. All of us have time frames to meet, but I think one of the things we are also saying is that if there is a provision or recognition that there will be a future first ministers' conference to deal with aboriginal self-government, that in itself would be a step forward and that is what we would like included in the Meech Lake accord. We would like that provision made in the Meech Lake accord.

Mr. Breaugh: OK. One final quick one. One of the recommendations is that the Ontario government should reinstate the constitutional funding of the first nations organizations. I would like you to elaborate a little bit on that. It seems to me David Peterson could get himself a lot of brownie points here by simply reinstating funding. Can you tell us what the government of Ontario--never mind the feds and all the other evil players--how about the white knights in Ontario? Are they providing any funding for any of the constitutional work that you are doing?

Chief Louttit: Rosie?

Interjection.

Mr. Breaugh: If they are, it is not catching a lot of attention.

Chief Louttit: I guess they are not. I have not seen any myself.

Mr. Chairman: Very quiet grant system.

Mr. Breaugh: There is no such thing as a quiet grant in this government, and we know that.

Chief Louttit: The only thing that we have received to deal with this is the memorandum of understanding and the letter of intent. There is

another one, but it has nothing to do with this. It has nothing to do with the process.

Mr. Breaugh: Do not try to cash them, either.

Chief Louttit: No.

Mr. Breaugh: You would be surprised, I am sure. The Treasurer of Ontario (Mr. R. F. Nixon) will find you in the next week with a big cheque and solve the first problem.

Chief Louttit: We can appreciate the fact that your Premier recognized us--

Mr. Breaugh: He is not my Premier. I made that mistake once; I do not make it twice. Thank you.

Chief Louttit: You are sitting in his province.

Miss Roberts: If I might just carry on from Mr. Breaugh's comment with respect to the funding of this process, I believe this legislative committee is one of the first to look at this Meech Lake accord in this particular round of negotiations. What you are saying is that you did not receive any grants from the Ontario government to come down here for this or that you did not receive any grants from the Ontario government to research what is going on. I assume that is what you are saying.

Then I would like to go into your interesting legal argument, because I would like to determine just exactly how far you have gone on that and what you expect to do. Maybe your legal counsel can answer me with respect to that.

Mr. Imai: I am not sure what you mean by how far we have gone. I assume that I have convinced you absolutely in my little dissertation.

Miss Roberts: You have convinced me that there is an argument that someone might be prepared to make to someone. Is someone going to make that argument? Do you intend to take a reference or to make the argument in front of the courts somewhere?

Mr. Imai: As far as I know, that has not been determined. It is a point that deserves consideration and certainly something I would hope this committee would take under advisement in looking at that question quite closely.

Miss Roberts: What I am asking is, have you gone far enough with respect to your legal argument that you are prepared as a group to take it to court, and your answer is no. You think someone else should take it on your behalf. Is that correct?

Mr. Imai: As far as I understand it, there has been no decision made on what specific actions to take with respect to the argument. The implication in your question was that there had been a specific decision not to proceed further with that. There has not been that negative decision. I certainly think there will be a great deal of interest in knowing how this committee handles that question.

Miss Roberts: It might take us some time before we report. All I am trying to do is to encourage you not to sort of sit and wait. You have processes of your own that you can take and that may be possible.

Mr. Imai: Perhaps if there is going to be constitutional funding, we may be able to.

Miss Roberts: It sort of went along from there. You have to take that in.

Mr. Breaugh: The cheque is in the mail.

Mr. Chairman: A supplementary, just on that point, from Mr. Offer.

Mr. Offer: Yes. On the constitutional funding, you have said that you want it to be reinstated, which means that there was something there before. Was there something there before? If there was something there before, who was paying that?

Chief Mosquito: There seems to be some confusion on that. The constitutional funding that we have received to date has come from the federal government and it has not come from the province.

Mr. Offer: Is the constitutional funding from the federal government still in place?

Chief Mosquito: Not as far as I know.

Mr. Offer: The federal government has taken away the federal government funding?

Mr. Imai: No. The federal government funding ended after the first ministers' conference. If you reviewed the Senate report, this is one of the recommendations it made. Prior to the specific first ministers' conferences, I do not know the details of this, but my understanding is that the province did kick in some sum to help with some of the organizations. Now that has gone as well.

Mr. Offer: I understand there was some federal government funding with respect to the constitutional talks and that program was ended by the federal government.

Mr. Imai: That is right.

Mr. Offer: Just as a follow-up--

Mr. Chairman: This is a second supplementary?

Mr. Offer: Yes.

Mr. Chairman: Right.

Mr. Offer: It is on the same line, though, Mr. Chairman. You will see that. With respect to the province of Ontario, does Ontario not have an organization which native groups are a part of in dealing with different issues? Is there any form of organization?

Chief Louttit: The only fellow we have is Fontaine and he has had problems with money.

Mr. Imai: I am not sure whether I can assist, but there are various bodies. Some of them, including the federal government, first nations and the

provincial governments, deal with different problems. I do not know whether you are referring to any one of them. There are a couple of agreements to try to deal with larger issues. One of them that the Nishnawbe-Aski nation is involved in is called the memorandum of understanding. They are trying to deal in a forum that involves the federal government, the provincial government and the Nishnawbe-Aski nation to deal with land issues in two thirds of the province.

Mr. Lupusella: There are programs falling under different ministries, as far as I understand it.

Mr. Imai: That is right. I think the Nishnawbe-Aski nation is involved with a couple of other groups in something called the declaration of political intent to deal with education on a broad scale. At certain points in the history of provincial-first nations relationships, there have been things like a cabinet-first nations joint committee, as I understand it, that kind of thing. There is nothing at that level right now. Does that clarify it?

Mr. Offer: Thank you.

Miss Roberts: Just briefly, one more comment. The indication was made or some comment was made that each word and each clause is very important. That may become a battleground from time to time. Looking at the Constitution and looking at the charter itself, I think each word and each clause is still a battleground and will always be a battleground as we fine-tune it for the society in which we live from time to time. We must guard against making it too specific so that we exclude people. I think that is very important.

What I want to be sure about is your position with respect to the first ministers' conference. You indicated, I believe, that you would like to be at the table when it had something to do with your particular nation. I cannot foresee very much that would not have a lot to do with your nation. I think that would mean you would be at the table, I assume for most of the time, but not as a voting member. Is that correct?

Chief Louttit: Naturally we want to vote. That is our land.

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Miss Roberts: That is not part of it right now. Is that what you are--

Chief Louttit: Not right now, but before it comes to that, we want to be there. We want to be recognized.

Miss Roberts: On what basis, though? That is the question.

Chief Louttit: As far as the Nishnawbe-Aski Nation is concerned, our livelihood, for example, our children, for example, our health. We want to be recognized at those--

Miss Roberts: No. I understand the reasoning behind it. I understand the basis behind it. I will be very brief. When you are at the table, you want to be there with spokespersons with a voting right as well.

Chief Louttit: Absolutely.

Miss Roberts: All right. Thank you.

Mr. Allen: I am very pleased the Nishnawbe-Aski nation has come to make its representation before us and make its points forcefully and leave us with a document we can review later.

I note that on page 2 you state very briefly, "The 1987 FMC on aboriginal rights was hampered by the Quebec Premier's regrettable decision to boycott the meeting," and then you leave it at that. Why were you concerned that the Premier of Quebec was not there?

Chief Louttit: He was not there. I do not know why they did not recognize us. They did not see any matter for being there at that time.

Mr. Allen: Perhaps you misunderstood my question. What I am asking is, why did you consider that those meetings were hampered by the absence of Quebec from the last meeting on aboriginal rights?

Chief Louttit: Now that they are recognized in this country, they could have been at that conference and could have voted for us as the seventh province and we would have had our self-government.

Mr. Allen: Why would that happen with Quebec present?

Chief Louttit: Prior to that, the Quebec government was not recognized, I suppose.

Mr. Allen: Do I understand from what you have stated here that you believe Quebec would be on your side in those discussions?

Chief Louttit: After this Meech Lake accord has gone through and they are recognized, then they should recognize us also. Because they were not recognized, they did not recognize us or anybody, so they did not show up.

Mr. Allen: I understand that. I think various people have observed that the Quebec government is probably more favourably disposed to aboriginal self-government than some other governments in the country. The next question I want to ask you is, why would you want to go back into a discussion of aboriginal rights before Quebec gets back at the table? Anybody at the table can answer that. I am not addressing it to any single person.

It would seem to me that since it is very unlikely some of the western governments that proved much of the stumbling block in the earlier discussions of aboriginal rights can be shown to have changed their minds, you need some change in the balance of forces when you go back to discuss aboriginal rights again. Rather than asking for another first ministers' meeting before Meech Lake is concluded, would it not be better to make that request after Meech Lake is approved so that then you have Quebec on your side?

Chief Louttit: I would be very uncomfortable, because after that--

Chief Mosquito: Do you want to finish your point?

Chief Louttit: Go ahead.

Chief Mosquito: There are a couple of questions you are asking as to why we might have included that statement on Quebec hampering the 1987 FMC.

Mr. Allen: Not Quebec hampering, but the discussion being hampered by the absence of Quebec.

Chief Mosquito: It is a matter of semantics. I suppose in one way what we are saying is that perhaps they could have been instrumental--we are not saying they would not have been on our side, but they could have been instrumental--in facilitating the discussions at the first ministers' conference of 1987. After all, it is a large province. I do not know the exact population. With the amending formula as it existed then--seven provinces and 50 per cent of the population--there might have been that possibility of settling or finishing the first ministers' conference on aboriginal constitutional matters back in March 1987.

I guess the other question that you had then was if, in fact, Quebec was or was not on our side, would it be better to--

Mr. Allen: Quebec was, in fact, more likely to be on your side. Would it not be better to wait for the first ministers' conference that you are proposing on aboriginal rights to follow the ratification of Meech Lake rather than before?

Chief Mosquito: If the Meech Lake accord is ratified, it would only make it more difficult.

Mr. Allen: Why?

Chief Mosquito: Because of the amending formula that has been introduced in the Meech Lake accord. It says it requires the consent of the 10 provinces.

Mr. Allen: The amending formula has a list of items under the unanimity principle that relate to various federal institutions. None of them is aboriginal rights, so that you really come under the same old formula still, as I would read it. It would not be more difficult.

Chief Mosquito: Then, again, from we have been hearing, every term that is used in the Constitution can be a battleground.

Mr. Allen: Yes, but some more of a battleground than others.

Chief Mosquito: You came up with that argument and who is to say that somebody else will not come up with a contrary argument to that?

Mr. Allen: I think that is worth thinking about, though, asking that tactical question, because you want more battalions on your side the next time you go into those discussions. That would be my sense of it.

Chief Mosquito: The point that we want to make is that there should be a provision made within the Meech Lake accord that a first ministers' conference dealing with aboriginal constitutional matters be made. I think Shin Imai would like to expand upon that.

Mr. Imai: Chief Mosquito just made the point that I was going make,

that if you open it up and hold up Meech Lake, it does not necessarily mean that you are going to resolve the whole issue of self-government. Right now, the accord is silent with respect to anything dealing with a first ministers' conference on aboriginal matters. Perhaps opening it up would allow that. One of the demands is to allow that to be included. Right now, we have silence. So I do not think that necessarily implies that you are going to resolve what has been a very complex matter for the past several years.

In terms of the unanimity, you are correct. For the amendments that the first nations and the aboriginal peoples are seeking, it may not require unanimity, although an argument was raised by Saskatchewan during this last first ministers' conference, which you may or may not know about, arguing that in fact unanimity was required to make the amendments that were being sought. It is a very complex constitutional argument which I would be happy to take you through some time.

I get a feeling and see a lot of rolled eyes, but that was an argument that was made. As well, your colleague Mr. Breaugh also suggested that one of the conventions that may be set up, even though it is not in law in the sense of a convention, was that you would be encouraging unanimity for all amendments, in a sense, by allowing one province to hold it up. So I think that in terms of opening it up, it does not have to resolve into a situation where we are trying to solve, to close off the aboriginal questions in a final matter.

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Chief Louttit: There is one final thing I want to answer to you. The reason we would have liked to have had that before is that if we do not have it before, if you go ahead with the Meech Lake accord, it is going to weaken the federal position. That is who our treaty is with, the federal people. What chance do we have if we weaken that? We will have further arguments, more battles. All kinds of crazy things could come out of it. There are things going around back home that are not too pleasant right now. I think we should deal with them at first hand. I do not want to get into another South Africa.

Mr. Chairman: On behalf of the committee, I thank you very much for coming today, presenting your brief and answering various questions. You have underlined a number of issues and brought new light to some that have already been raised. We thank you very much for taking the time to be with us this afternoon.

Chief Louttit: Thank you very much for having us.

Mr. Chairman: Our pleasure.

Chief Mosquito: Can I make one personal comment?

Mr. Chairman: Yes.

Chief Mosquito: Page 12 of the brief you received says the Meech Lake accord "was reached through an undemocratic and high-powered form of executive federalism." We understand that the Prime Minister, with the premiers, came to this agreement with the idea of wanting to reinstitute co-operative federalism. I would like to bring that out and bring it to the attention of the committee members because, basically, that is the position we would like to have, a co-operative working relationship with the federal and provincial governments in a manner I would like to define as co-operative federalism.

Mr. Allen: Can I ask Mr. Imai to provide us with any written documents he has pertaining to that Saskatchewan government interpretation of the unanimity principle applying to aboriginal rights?

Mr. Chairman: Would that be possible, Mr. Imai, if we could be in touch with you?

Mr. Imai: You can certainly feel free to be in touch with me. I would have to talk to you about the classification of the--

Mr. Chairman: Do we have the address where we can reach you and discuss it?

Mr. Imai: I can give my card to the clerk.

Mr. Chairman: All right. Thank you again. Mr. Harris?

Mr. Harris: Just while we are on the subject, I would be interested in anything the Attorney General's department has on the legality of making changes without a first ministers' conference with the first nations present. I think that was the first point they brought up. Sorry, I do not have it here.

Mr. Chairman: Section 35.1.

Mr. Harris: I wondered about that one as well.

Mr. Chairman: OK. I will ask the Honourable Donald Johnston, member of Parliament, to come forward as our next witness. On behalf of everyone, I bid you welcome to the committee, Mr. Johnston. It is a pleasure to have you from that place to this place, if that is the way we should put it.

I apologize that we are running behind, but I can assure you that it will not interfere with the time of our discussion with you. Inevitably, it seems in these discussions that we run late, never early. We have distributed a copy of your brief to everyone. If you would like to proceed, in our usual fashion, after you have made your presentation, we will then have a period of questions.

HONOURABLE DONALD J. JOHNSTON

Hon. Mr. Johnston: First of all, I want to thank you, Mr. Chairman, and the members of the select committee for giving me this opportunity of appearing before you and discussing the implications of the constitutional accord. I refer to the accord as Meech Lake. That is the common parlance in the country. When I talk about Meech Lake, I am not talking about the Meech Lake communiqué; I am talking about the accord that emerged from the Langevin meetings.

I say to you that it is not an exaggeration in my judgement to see Meech Lake as creating a legal and political vehicle for the disintegration of the Canadian federation. Ontario, in my judgement, has a pivotal role to play in preventing that from happening.

I was alarmed at my very first reading of the Meech Lake communiqué. If anything, my concern for the future of Quebec and Canada and for the future of the Canadian federation itself has been heightened, not lessened, during the intervening months. I have written, I have spoken and I hope to do so and continue to do so in every part of this country. The purpose of that primarily

is to raise the consciousness of Canadians to what is really at stake with Meech Lake. I have an annex attached to my initial notes that I am working from right now, which is essentially a submission I will be making to the Senate.

I will be making it on March 23, I learn. I have used it simply as a source document, to which I hope members will refer. I know you are burdened with lots of material. I know what being on one of these committees is like, but I do hope you will take the time to look at some of the issues raised in the annex, part of which is in a question-and-answer format, where I try to address some of the questions that have been raised so far.

I have received hundreds and hundreds of letters from every part of this country from people who express concern about Meech Lake. These are articulate, well-thought-out letters. These are not the kinds of letters that you as MPPs and I as a member of Parliament often receive in response to some piece of legislation, which are four letters. These are thoughtful letters from Canadian individuals. This has come forward in the absence of any political debate, because all three parties at the federal level have elected to support Meech Lake. The reason for their support, I fear, is they do not want to alienate Quebec voters due to the fact that there is a general election in the not-too-distant future.

I do not happen to share that view myself--and we can discuss that afterwards if you like--in other words, that there will be an alienation of Quebec voters. But I do say to you that the stakes for our country are so high that this has to be raised above partisanship, in my judgement, and we cannot be guided by short-term political expediency.

I believe many politicians who are supporting Meech Lake know in their hearts that it is wrong, but they have found comfort from various experts, some of whom have appeared before this committee. Today, I want to take the opportunity, instead of repeating the arguments I have made in the annex, of dealing with some of the witnesses who have come before you.

During the first round of submissions in Ottawa, before the special joint committee of the House and Senate, I found many people were coming and making a point, putting forward their particular points of view, but they were not being joined in issue. There was very little debate taking place. It seems to me, having moved here to this select committee, I would like to see more of that debate taking place and that, as I say, is what I hope to do with you this afternoon.

Two people specifically who have appeared before you have had considerable influence in this debate, Wayne Lederman and Peter Hogg, both of whom are recognized constitutional authorities. Professor Lederman appeared before the special joint committee and made representations that were very similar--in some respects identical--to those he made before this committee on February 3. He also commented on Meech Lake in an article in the Financial Post of August 31. That article, I note, has also been discussed before this committee.

While both of these gentlemen, Professors Lederman and Hogg, support Meech Lake, their positions are not entirely identical. What I intend to do, I think will be helpful in putting forward my own views, if I, as I say, join issue with some of theirs.

These two gentlemen are both distinguished in their field, namely,

constitutional law, but I would point out that they have no acknowledged expertise in dealing with the political dynamics of Meech Lake; yet the opinion that has been put forward by Mr. Lederman and Mr. Hogg in both cases represents a mixture of political judgement and legal analysis.

I would caution committee members when reviewing their testimony, not to associate their legal expertise with their political judgements. As I point out, you in this committee are politicians. It is you who have a much better position and more expertise to assess the political dynamics flowing from Meech Lake than either Professor Lederman or Professor Hogg.

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With regard to their legal credentials, I would also remind committee members that there are competing views from learned constitutional lawyers of equal merit. I say this with respect to Professor Lederman's longevity which he reminded us of in the Financial Post article where he said he had "been a professor of constitutional law, teaching and studying at seven Canadian universities in five provinces in all regions of Canada, including Quebec, for almost 40 years." I would say that those 40 years of teaching and professorial perambulations, as I call them, do not add weight to the merits of his arguments.

I make reference in my notes to the late, and I would say great, Frank Scott, who certainly did not teach in as many provinces, but I can assure you that Scott, who is a giant constitutional authority transcending even his death, would have found Meech Lake abhorrent, not only to his vision of Canada but also as a legal contribution to the Constitution.

I think this document is guilty of shoddy draftsmanship, woolly thinking and certainly wishful thinking, and all of these were foreign to Scott's concept of constitution-making. It is sad that in this Meech Lake accord so many of his pupils seem to have fallen into the traps which he had revealed to them over many years with impeccable, clear-sighted reasoning. I see that even Pierre Elliott Trudeau, who is not noted for intellectual humility, is quoted in a recent Maclean's article as saying, "Frank taught me everything I know."

But we do not have to look back to Frank Scott. Around us and in this committee we have seen an impressive array of younger constitutional legal experts who take issue with Meech Lake. Let me mention John Whyte of Queen's University, Jack London, Bryan Schwartz, Deborah Coyne, Stephen Scott and Howard McConnell. When one adds to that legal expertise the historical perspective of such pre-eminent historians as Ramsay Cook and Michael Bliss, both of whom I believe have made submissions to this committee, surely we have just cause to challenge the comforting views that have been offered to us by Professors Lederman and Hogg.

I want to examine with you some of the political judgements that have been made by these two gentlemen.

First of all, Professor Lederman assures us that if Meech Lake is adopted as proposed, it would "restore the political legitimacy of the federal Constitution in Quebec." In the same testimony he says: "For the immediately foreseeable future, we see Canada going forward in a number of progressive ways if the accord is put in place. The future is dark and uncertain if it is not put in place." Then he goes on to say, "I would doubt, for example, if there is going to be any progress in aboriginal rights until Quebec is a wholehearted participant in the requisite future conferences."

Then the most resounding political judgement of all by Professor Lederman: "...as I said, this is an extraordinary operation to repair an unfortunate omission in 1982, and a response to what the Quebec government has told us would satisfy it. We think that objective is so important that we do not want to see it jeopardized in any way."

I do not object and no one can object to anybody making political judgements or explaining to us how and why in his or her opinion the moral adherence of Quebec to the Canadian Constitution is significant, but I simply point out that this is a personal political opinion of Professor Lederman and some of his academic colleagues.

Professor Hogg, on the other hand, seems less inclined to get involved with the politics of the Constitution, but he dabbled in politics when he appeared before you on February 2. He tells us in his testimony, which I have read carefully, that the patriation exercise of 1982 "created a profound sense of grievance in Quebec." He advises that Meech Lake answers the question, what does Quebec want? He suggests that Quebec has now said what it wants, "an extraordinarily important development," to use his words.

Now, these declarations by these two professors are not of a juridical nature. They are political judgements, and in my view, naïve political judgements at best.

I challenge the position that there was a profound sense of grievance in Quebec by reason of the 1982 patriation without Quebec's consent. I personally have represented a riding in Quebec, St. Henri-Westmount, since 1978. Approximately 50 per cent of that riding is French-speaking, much of it, in the St. Henri area of the city, unilingual. I am not aware, and I have checked, of any letter or any telephone call received by me or my office from 1982 until 1987 regarding the Constitution. Who is better placed to measure such a profoundly felt grievance, were it to exist: a member of Parliament such as myself, representing tens of thousands of Quebecers, or constitutional lawyers teaching beyond the province with their information sources apparently limited to editorial writers and colleagues in Quebec universities?

Moreover, while the general statement of the Quebec government's demands can be found in the Quebec Liberal Party election literature of 1985, as far as I can ascertain, and again I have done some research on this, the constitutional issue was never debated or never even raised by either now Premier Bourassa or the then Premier Pierre Marc Johnson during the 1985 election campaign. I want committee members to ask themselves, can we believe that this was a burning issue preoccupying Quebecers when it did not merit any comment during a provincial general election in 1985?

But the most naïve political assumption of these two gentlemen is that somehow the acceptance through Meech Lake of the five conditions demanded by Quebec has laid to rest Quebec's claims. Premier Bourassa has been candid and forthright in his speeches to the National Assembly on this point. He told the Quebec National Assembly that Quebec gave up nothing through Meech Lake and that the Liberal Party of Quebec maintains its position that Quebec can unilaterally separate from Canada at any time.

His minister Gil Rémillard assured Quebecers that Meech Lake was just the first round, new demands will be made at first ministers' conferences. To quote him, "This is only a first step. There will be further constitutional conferences every year." Remember what Mr. Rémillard has told us. He has been

honest. He has been forthright. Meech Lake is only a first step and we can expect further demands from Quebec governments each year.

So much for the political side of it. Now let me spend a moment on some of the legal arguments that you have been inundated with regarding the distinct society, which have been put forward by Mr. Lederman and Mr. Hogg.

Professor Lederman evokes the following points, which I say merit examination. First, he dismisses the argument that Meech Lake reduces the effect of the charter because, in his opinion, to do so would require an increase in the powers of the provincial or federal parliaments. He invokes the so-called nonderogation provision of the fourth paragraph of subclause 2 to argue that such powers have not increased.

Second, he argues that the charter guarantees under section 1 are only to be subject to such reasonable limits as can be demonstrably justified in a free and democratic society. Thus, he concludes that while the "distinct society" clause will influence the interpretation of Quebec laws, he argues that such has always been the case and that the proposed section 2, and I quote him here, "simply makes explicit what has been implicit from the beginning."

Third, he argues that section 16, which states that certain charter rights, namely, the aboriginal and multicultural rights, are not affected by the "distinct society" clause and not subject to the application of that maxim of interpretation, which I am sure you have heard ad nauseam here, namely, "expressio unius est exclusio alterius," to use his words, and I quote him again, "Section 16 is superfluous." That is what he said in his article in the Financial Post of August 31.

In arriving at that conclusion, Professor Lederman ignores another canon of construction, namely, that a legislature does not speak for no purpose. There is a strong presumption against any word being superfluous. It would be difficult to convince a court that the entire section 16 is superfluous, as Professor Lederman would have us believe.

In brief, Professor Lederman does not see the "distinct society" clause of Meech Lake as changing the status quo. In his view, and again I quote him, his precise words were, "The government of Quebec, representing the people of Quebec, has said that they would feel better, they would feel more secure, if that which has been implicit were made explicit."

1600

I have not been able to find where the Quebec government made such modest claims. In fact, the Quebec government's official view of the impact of section 2 is radically different from that proposed to us by Professor Lederman. I will deal with that Quebec position in a few moments.

Now Professor Hogg, in appearing before you, made a number of slightly different points on the distinct society. First, he says the provision is interpretative only, conferring no new powers, "so that its chief relevance is really only for when other constitutional provisions are vague or ambiguous."

Second, he attempts to allay the fears of Quebec's English-speaking minority, claiming that the distinct society is one in which there is an English minority living along with the French-speaking majority. Therefore, presumably from that he argues that the promotion of the distinct society means the promotion of the entire society, including the English minority.

He also expands somewhat on Professor Lederman's implicit-explicit thesis, but he admits that "the 'distinct society' clause could somewhat expand the power of the legislature of Quebec to derogate from the charter."

The general impression that these two professors have tried to convey is that Quebec has gained nothing except a "nice feeling" from its description as a "distinct society" and, by inference, the role of the legislature and the government of Quebec to preserve and to promote the distinct society or distinct identity, the words used of Quebec, must also be virtually meaningless. It would seem that some of the premiers who were concerned about the implications of the "distinct society" clause finally agreed to it, comforted by the assurance of legal experts, including Professor Hogg.

Yet, was it not this very provision, I ask you members of the committee, this "distinct society" clause that caused Premier Bourassa to claim publicly that no other federal state gives to one member of the federation powers which are so clear, so important and so watertight in their interpretation? It was also this provision that he was discussing when he said before the National Assembly, and I quote:

"First of all, we note that with the (recognition of a) distinct society, we are achieving a major gain, and one that is not merely symbolic, because the country's entire Constitution will from now on have to be interpreted to reflect this recognition. The French language constitutes one fundamental characteristic of our uniqueness, but it has other aspects, such as our culture and our political, economic and legal institutions. As we have so often said, we did not want to define (all those aspects) precisely because we wanted to avoid reducing the Assemblée nationale's role in promoting Quebec's uniqueness.

"It must be stressed that the whole Constitution, including the charter, will be interpreted and applied in the light of the section on our distinct identity. This has a bearing on the exercise of legislative authority, and it will enable us to consolidate what has already been achieved and to gain new ground."

This is the Quebec view. The "distinct society" clause was proposed, it would seem, by Quebec's legal experts. While some discount Premier Bourassa's statements to the National Assembly as political rhetoric, I do not. The language of the "distinct society" clause was chosen with great care and, as the Premier emphasized at the beginning of his comments to the assembly on June 18, the statements and intentions of legislators can be important in constitutional interpretation. Hence, he undertook to be as precise and concise as possible and took care to explain Quebec's position.

Members will appreciate, I think from what I have offered to date and from your recollection of testimony before this committee, that the views of Professors Lederman and Hogg, on the one hand, and those of Premier Bourassa and, I should add, Gil Rémillard, who is also a constitutional lawyer, on the other, are irreconcilable. It is those of the Premier that will carry weight before our tribunals on legislative intention.

But look at the other side of it. Imagine the outcry from Quebec should one day Professors Lederman and Hogg be supported in their interpretation by the Supreme Court of Canada. Quebec will see itself as having been duped. The nationalists' voices will rise above any kind of rational debate. The cries for independence will be reinforced, especially should the court speak when the spirit of separatism is waxing. Lise Bissonnette, a noted journalist in

Quebec, made the point in an article in the Globe and Mail in December, and I quote her:

"When women's groups worry that the 'distinct society' clause might override the charter, federal and provincial politicians are quick to reassure them that it will not. Who is to be believed? In Quebec, the distinct society is marketed as a meaningful development; in the rest of Canada, it is 'sold' as insignificant. All the joy displayed over this Quebec-Canada reconciliation might expire when the 'government of judges' has its final say."

The alternative scenario is at least as discouraging. In other words, if Premier Bourassa is right and Professor Lederman and Professor Hogg are wrong, and I personally believe that he is right, we are handing a loaded gun to the next separatist government in Quebec, and there will be one day a separatist government in Quebec. The opposition always becomes the government in our system. As Claude Morin, who by the way was the architect of the referendum question in 1980, has said, the Péquistes would use the "distinct society" clause to gradually take Quebec out of the federation. You will find in the annex the actual reproduction of the transcript in an exchange he had on a CBC program.

This initial reaction of Claude Morin has been reinforced and in fact was reinforced only days ago by Jacques Parizeau, who is the leader in waiting of the Parti québécois and probably of the next government. If you look at the Montreal Gazette, you will see the title, which summarizes exactly what he thought and said. The headline was, "I'd Use Meech Lake in Grab for Powers: Parizeau." Despite these obvious consequences, the premiers and others have been seduced into believing that if Meech Lake is rejected, Quebec will reject Canada.

I say that if you or we fall for that kind of argument, we might as well kiss this federation goodbye because there always has been and there will always be something Quebec nationalists want, the principal one of course being eliminating the status of Quebec as a province of Canada. We dealt with that issue in 1980 and in my judgement we are in the process of undoing the 1980 referendum results. Meech Lake supporters are unwittingly saying to us, "Quebec rejected sovereignty-association, but we will now give Quebec the means of achieving it anyway."

Unlike Professor Lederman and Professor Hogg, the role of promoting the "distinct society," in my view and in the view of many others, can be seen as doing what the Péquistes or the Parti québécois intends to do; in other words, enabling Quebec politicians to assert jurisdiction over any area of power which is not specifically provided for in the Constitution and which in any way supports the distinctiveness of Quebec. I take you back to Premier Bourassa's comments. That does not mean just language; that means legal institutions, cultural institutions, economic institutions and so on.

Why should they not try? They will have been given through Meech Lake the constitutional and moral authority to do that by the people of Canada. Can one envisage any separatist government not exploiting that opportunity to the maximum?

Finally and in conclusion, I just want to say a word about Professor Hogg's view of the English minority position. He tells us that the so-called duality clause recognizes there are English-speaking Canadians present in Quebec and that they should be included in the "distinct society." That there are English-speaking Canadians of course is an observation of fact, and the

role of the Quebec assembly is to preserve their existence, but the operative provision of promoting the distinct identity does nothing to preserve rights.

This point is expanded on in the annex. The same obligation of course exists for other provinces with respect to French-speaking minorities. Would it not seem ridiculous to interpret the "distinct society" clause as imposing an obligation on Quebec to promote the interests of the English-speaking minority while other provinces would only be required to "preserve...the existence of French-speaking Canadians"? Yet that appears to be the conclusion to be drawn from Professor Hogg's analysis.

Here, Professor Lederman differs with Professor Hogg. In his comments, he has specifically referred to the "distinct society of French-speaking Canadians in Quebec." There is no room for English-speaking Canadians or anybody else in that concept of the "distinct society."

Similarly, Premier Bourassa has offered no evidence that English-speaking Canadians would be part of the "distinct society." To the contrary, the whole thrust of his remarks is towards a unilingual French Quebec. As he sees it, "For the first time in 120 years of federalism, Quebec has obtained a constitutional foundation for the preservation and promotion of the French character of Quebec."

1610

So far from promoting the English-speaking minority as a member of the "distinct society," the promotion of the distinct identity in Quebec would seem to point to the suppression of the English language. Meech Lake has not even been adopted and what do we see to date? From sign laws to education to the compulsory French dubbing of English films to the possible extension of Bill 101 requirements to small business, the present Bourassa government, like its Péquiste predecessor, seems determined to eliminate as far as possible the traces of the English language from the face of Quebec. He has also indulged in further social blackmail, if you like, or political blackmail, declaring as recently as about a week ago that Quebec anglophones would prefer unilingual French signs to social unrest. The Premier's job is to accept the responsibility of doing what is right while preventing social unrest.

I also go into what I call the disastrous political consequences of a French Quebec, which is the direction in which Meech Lake moves us, in terms of the Canadian federation. I will not deal with that now but I have dealt with it in some length in the annex. Let me just summarize it with this question: Do you truly believe that Canadians from coast to coast in this country will accept a unilingual French Quebec while promoting an officially bilingual Canada across the country?

My focus today has been to address some of the implications of the "distinct society" clause and to challenge the opinions which have been offered to you by Professor Lederman and Professor Hogg, but I would not want committee members to be left with the impression that this is the full range of my concerns. Far from it. In fact, if you have the opportunity of looking at the annex, you will see that I deal with a wide range of issues under Meech Lake, but my overall evaluation is spelled out in the annex and I would just like to read it to you.

I put it in this language: "To obtain Quebec's tenuous adherence to the Constitution, they"--referring to the first ministers--"gave up power and authority to all provinces, but especially to Quebec; they put the amending

formula in a straitjacket and in doing so made Senate reform a virtual impossibility; they dealt a mortal blow to a bilingual vision of Canada, moving the country towards a French Quebec in an English Canada; they may have compromised the quality of the Supreme Court; they compromised the constitutional safeguards for linguistic minorities and sexual equality rights and they have put Canada securely upon the road to further decentralization through opting-out provisions and semi-annual auctions at federal-provincial conferences."

Members of this committee, I say to you that this constitutional juggernaut must be arrested before it is too late. Time is short. You in this committee have a responsibility and an obligation not just to Ontario, but also to Canada. I realize it is a very onerous responsibility. Even if you reject my prediction as to where Meech Lake is likely to take our country, at the very least you must acknowledge, as others have, that there are ambiguities, uncertainties and misunderstandings as to what Meech Lake really means.

Eminent jurists disagree. Politicians disagree. From statements made by Senator Murray and Premier Bourassa--you will find them in the annex--it is clear that Quebec and the federal government disagree. Is it appropriate for us to discharge our responsibilities--you as members of the Legislature of Ontario and me as a member of the federal Parliament, and is it a responsible exercise of that trust and mandate from the people who elected us, to transfer responsibility for the meaning of Meech Lake to the courts?

In substance, our premiers and the Prime Minister have said, "In many ways, we do not know what Meech Lake means, but one day the Supreme Court will tell us." That effectively is what the Prime Minister said with regard to this "distinct society" clause. Why not tell us now? Why not a judicial reference by the Ontario government to the Ontario Court of Appeal before Meech Lake is adopted by this Legislature? Then your votes would be taken in full knowledge of what is at stake, certainly with respect to a number of the areas where there is great disagreement as to what the implications are.

I will close with a paragraph that I put in my notes, which is the reason I mentioned Frank Scott. I was recently looking at a biography of Scott. There is a chapter entitled "Take Care of Canada," which I thought when I looked at it would be an appropriate epitaph for Scott as well as a message to the current guardians of our Constitution. I say to you, that message does not yet seem to have been received.

I look forward to your questions.

Mr. Chairman: Thank you very much, Mr. Johnston, for your comments and also for the annex. I can assure you we will look at the annex closely as it expands on a number of the points you raised. I also want to thank you for the eloquence and passion of your words. This is a topic, I suppose, where we sometimes get into the dry discourse of constitutionalism, and I think that your points have come through very clearly this afternoon.

If I might then turn to questions, Mr. Harris.

Mr. Harris: Thank you very much, Mr. Johnston. There is nothing wishy-washy about where you stand on Meech Lake as opposed to the wishy-washiness of some of the interpretations that we are getting on various aspects.

Before I get into any details, I want to say I did have an opportunity earlier, late last week, to have some questions of you, and I will not get into too many specifics, but I may come back to them at the end if some of the things are not covered by others. I do want to congratulate you on making the presentation, on speaking out. I want to congratulate you on coming before this committee.

We are having somewhat of a difficulty understanding exactly where we stand as a committee and what powers we do have and what is our purpose. I think the fact that you have come says a lot. The Liberal youth were told they should just meet with the Liberal caucus of this committee, not with the whole committee, and I congratulate you for coming before us all and putting your views on the record. I think it is significant.

I want to ask you, because we are wrestling with it, you may not be aware or maybe you are that there are a lot of answers we are having trouble getting. Le Devoir said yesterday that Ontario, Manitoba, New Brunswick and Prince Edward Island are negotiating behind the scenes to force Prime Minister Mulroney to change the Meech Lake constitutional accord. The story came out of Winnipeg. It said the federation of francophones outside of Quebec is also a party to the secret talks among those four provinces. Are you aware of any of that?

Hon. Mr. Johnston: I became aware of the Le Devoir article actually just a few minutes before I began my presentation. It was raised with me by one of the journalists. I am not aware of it. I have had correspondence and discussions with the various francophone groups outside of Quebec. I am pleased if they are starting to put pressure on these governments.

I would like to emphasize one point. As I have sat through various hearings, there are many groups that have a specific axe to grind. It is quite legitimate for them to come forward and make a point, but I would hate to see a couple of amendments made to satisfy the demands of certain groups and lose sight of the whole forest because, in my judgement, the implications of Meech Lake go far beyond the issue of the anglophones in Quebec, the aboriginal peoples, the Yukon. It is the entire package I hope that this committee would be able to look at in terms of the political dynamics and the road that it is setting Canada on.

I welcome that if it is happening, but I have perceived no direct evidence of it. At the same time, I hope as you meet with these various groups--you have met with some of them--that you will also bear in mind that there is a major issue involved in Meech Lake that goes far beyond the grievances of any one group.

Mr. Harris: Thank you. Perhaps, Mr. Chairman, you could ascertain the validity of what is in Le Devoir. I think it is significant for our committee, if that is the case and that story is correct, I would like to leave the specifics to some of the other questioners. I have asked a lot of the questions that I have of Mr. Johnston. I will pass for now and see what comes up.

1620

Mr. Breaugh: I wanted to set aside the practice that I suppose is pretty common here, that we all become constitutional experts and advise one another on our learned opinions. Basically, I am of the opinion that a lot of the questions about what this word means or what that clause means are pretty

much a useless exercise for us. This is not the Supreme Court, and it will be the Supreme Court which does that. Our job as lawmakers is to try to direct the language as clearly to our intent as we possibly can. If we have any skill at all in that regard, there are certain words we use when we draft a bill that we have used a lot, and we know they will stand up in court.

I want to leave the definition stuff aside for a moment and talk to you a bit about two things. One is the process. I find the process whereby we came to this agreement untenable. As someone who believes in the democratic parliamentary process, I cannot defend that process at all, even if you want to call it executive federalism, dress it up and give it some kind of clean title.

Part of what the committee wants to do is to address itself to the problem of what we can do that will give the process of making a constitution and amending it in Canada some credibility. I do not think that the current process has very much in the way of credibility, and it is not helped by the fact that various premiers have said, "We will let this go to a committee, but we will not tolerate amendments." That is pretty alien to our system as well.

I would like to hear for a minute what you have thought about the process. Can the process be rectified? Is the thing so wrong now that there is nothing anyone can do that will give credibility back to the process itself?

Hon. Mr. Johnston: I agree with you. I think the process is, as I think you said, untenable. What is even more untenable and unacceptable is that the process that has brought us Meech Lake is now being put into the Constitution as a permanent fixture; namely, the annual constitutional conferences. That means that 11 Canadians, behind closed doors, making their own tradeoffs, whatever they may be, are going to change the basic law of this country.

Because you have to combine the notion of this first ministers' conference with one of the political realities of our system, which is party discipline, when a Premier puts his signature on a document behind closed doors at Meech Lake or anywhere else, he is putting his credibility, his cabinet and his caucus on the line under our system, unless it is understood at that meeting that there will be free votes, that they will emerge and have free votes in all their legislatures. That, of course, is a possibility.

The concern I expressed with regard to this institutionalization of first ministers' conferences is that we have that old saying that the proof of the pudding is in the tasting. Well, we have tasted it. Meech Lake is an example of it, and now we are faced with this juggernaut which emerged from behind closed doors in this untenable process.

Can we correct it? Can we rectify it? I think that was your question. What I would like to see out of all of this is not a rejection, saying that everything is fine and we are going to reject and stop it. What we should do is go back to the drawing boards. There have been enough concerns raised about this. There have been enough ambiguities, whether it is on specific words--and I agree with you that legislators are to do their best--but these are not specific words, these are concepts.

When we have senior statesmen, theoretically, in our system saying, "We do not know what this means, and some day the court will tell us," if it were freedom of expression or other areas of the charter which evolve as time evolves, I can understand perhaps someone saying that. But when you are

talking about a distinct society and what does that mean, dividing Canada into two societies, and does the distinct society override charter rights, I find it completely unacceptable that we should say that will become the responsibility of the court. What is our responsibility if it is not to give the kind of guidance that you have suggested and put it in the best language we can?

Indeed, we have to try to rectify it. The way to do it, I think, is to stop this process, go back to the drawing board or the first ministers' conference, bring out all the concerns that have been raised and make sure everybody understands what Quebec's position is. We are all democrats. If we want to have a unilingual French Quebec and an English Canada, we are entitled to have it, but I do not think it should come in the back door through misunderstanding and ambiguity. It should be done up front and we will have a national election on it, perhaps, with parties running on that issue, and we will see who wins. That is the way our system should operate.

It is not too late yet, but it will be too late if this process continues and all the legislatures adopt it. That is why I am hopeful that you here in Ontario will at least take the very modest step which I suggest, namely, why not take parts of it and ask the courts to tell us now rather than later?

Mr. Breaugh: OK. I want to pursue a couple of things with you.

Mr. Chairman: Mr. Breaugh, would you permit a specific supplementary on that?

Miss Roberts: Just very briefly, if I might, Mr. Johnston, you are suggesting that we just stop this here and go back to the first ministers' conference and then maybe have some more discussions or have a national election on a particular issue or a particular set of changes to the Constitution.

Do you have no other information for us or help as to how the process can be changed? Do we wait every five or 10 years and then have an election on the constitutional amendments that we thought up in the last 10 years or something like that? Do you have any help for us with respect to that process?

Hon. Mr. Johnston: I have no problem with constitutional conferences, first ministers' conferences. First of all, I do not think they should be institutionalized and I do not think they should be behind closed doors, because what I see emerging with the experience of Meech Lake is a system of brokerage. As I was saying to someone the other day, it is like sitting down and dividing up an estate. You say, "I would like the grand piano," and somebody says, "You can have it if I can have that chest of drawers and grandmother's picture" and so on.

One senses that this is the kind of thing that took place at Meech Lake. Mr. Peckford said, "OK, but I want fish on the agenda." Mr. Getty said, "I will go along with the distinct society, but I want Senate reform on the agenda next time." Mr. Bourassa wanted to put a limitation on the spending power and they said, "OK, you can have a limitation on the spending power if we all have a limitation on the spending power." He said, "We want to be able to opt out of power transfers" and they said, "Fine, you can have that if we get it too."

That is what is happening under this process away from public scrutiny,

behind closed doors. So my suggestion is, sure, constitutional conferences, wide public debate, free votes in the legislatures and in the House of Commons so that we emerge with truly a national consensus.

Miss Roberts: You believe that as long as these constitutional conferences are open, that is a correct way of doing it, even though they are doing exactly the same thing?

Hon. Mr. Johnston: Unfortunately, if we let this go and we emerge with a system of unanimity, which means that everybody then is in a position to blackmail, I do not know where that will take us. That is why I would like to see it stopped.

Mr. Breaugh: I wanted to pursue a couple of things at the beginning of this process and at the end of it, if I may. At the beginning of the process, I have no means of knowing what any of the premiers' intentions were, there being no records, really, of the conversations and, frankly, an unfortunately small amount of gossip leaking out about what the hell happened behind closed doors as well. There is no way to trace what the intentions of the premiers were when they drafted this. The only thing I can say is that this was not done on the back of a cigarette pack. It was drafted by whatever constitutional legal experts we have working in Ottawa these days, so it was not done by accident or by chance. The words were chosen carefully.

I do not have a problem with the first ministers meeting every six months or every two weeks if they want to, but I think in a democracy I have a right to know what they are doing there, I have a right to know what the agenda is, and I believe that when they come to the point of making a decision I have the right to be able to observe that process so that I can make my own judgements about who is doing what and what their motives are. The intention is the problem. I am blocked out of that process entirely.

I would like to pursue with you the other end of the process. If you took it just on face value that each province in Canada, on a limited number of things, does in fact have the right to veto, that is one of those rights that you had better not use too often, because we are sitting in a city that has two million people. A lot of our provinces do not have that kind of population base. As soon as the smaller provinces begin exercising their right to veto, even on a regular basis, people are going to talk about representation, so there is that kind of problem.

At two ends of this process, then, I have some difficulty. I want to get your comments on how practical the proposals under Meech Lake really are.

I will tell you before you start that my judgement is that if certain things were done--if aboriginal rights were resolved, if we were able to resolve the charter questions that are in this document, if there was a package of things that happened--implausible though it might seem, this accord does not seem as outrageous to me as it might to some others.

On the other hand, if those things do not happen, the rules of the game change entirely, so that at the end of the process I am left with another untenable political process where people have a legal right, a constitutional right to block, for example, the Yukon or the Northwest Territories ever considering provincial status. That, I think, would be untenable. Without some process work, the first ministers would take what got us into this position, extrapolate it and make it much worse over the next few years. So at both ends of this process I have great difficulty and I would be interested in your comments on that.

1630

Hon. Mr. Johnston: I agree with you. I think the veto process that you are referring to is one which lends itself to leverage. It is not to say that a province would not come in, but if you are going to get a province in and this is all done behind closed doors, I can see a Premier saying, "Sure, we will let the province in, provided we get perhaps part of the province." One of the great concerns at one time was the extension of the western provinces into the territories and into the Yukon. That has always been of concern to the people in the north.

There is leverage that every province now has with respect to somebody coming through the veto process and, quite frankly, I find the whole thing almost absurd, the kind of structures that we have set up for constitutional evolution. I go into this in some respects in the annex, but what can one say? The whole thing is-bizarre. Here we have Prince Edward Island with a veto power. You are saying that if that happens, people will start to question representation. What are you going to do? Have a revolution because we have not provided any mechanism that allows these matters to be sorted out? There is no referendum process. You cannot go to the people.

Every Constitution has to be, in theory, a living, growing tree that responds to social and economic changes. This one, if we adopt it the way it is, does not, and that means you can no longer have evolution. As history shows us, when you cannot have evolution, ultimately you get some form of revolution because people are so frustrated that there is no way out of this legal constitutional straitjacket that we are being offered.

I would hope this committee will come forward with recommendations on process and also on how that process can be affected by the specific legal impediments to evolution that are put into this Meech Lake accord.

Mr. Chairman: Mr. Cordiano, then Mr. Eves, Mr. Allen, Mr. Offer and Mr. Elliot.

Mr. Cordiano: I would just like to make one point and also to thank you for coming before us. There is not a lot of time to get into specific issues, and I do not think we necessarily should be doing that this afternoon.

I would like to deal with some of the concepts you have put forward and some of the notions with respect to Quebec's position within Confederation. The point you seem to be making in part of your brief is that the Quebec Liberal government is at this point in time putting forward a view about where Quebec stands in Confederation. I get the sense, almost, that you are saying that really a Quebec government does not speak for the people of Quebec alone. I would agree with that. We have a national government, and certainly the same people who voted for the Quebec Liberal government voted for their federal members of Parliament. If that is the case, certainly when the referendum was held, Quebecers voted yes for Canada. We know what happened. They ousted the separatist government in 1985. They voted for a Liberal government.

You say not much discussion took place with respect to constitutional reform, but I cannot imagine that within a four- or five-year period the people of Quebec suddenly forgot about constitutional reform or suddenly forgot about the fact that they were not in part of the Constitution. I think that perhaps the average Quebecer had many things on his or her mind. The economy probably was one of the more important issues facing a person living anywhere in Quebec, with the high unemployment rate, etc. But I cannot imagine

that no thought was given to constitutional reform. There was some discussion at the very least during those years about constitutional reform and the people of Quebec had some idea about the Constitution and where Quebec stood in place in Confederation.

I say to you that I think the people of Quebec would have voted for a government that was proposing something that was reasonable and I would say that, certainly in those intervening years, there is at least a view in Quebec that this is what Quebec needs to be a part of Confederation, part of the Constitution.

You have two governments, basically. One is separatist and one made up of members of the Liberal Party who have formed a government. We are sitting here trying to decide what is the right thing. We now have all three federal parties agreeing to this accord, basically. There are dissidents among all three parties perhaps, people who will vote against the accord. At the same time, the people of Quebec voted for federal members of Parliament, the majority of which were Conservative in the last federal election and then subsequent to that voted for the majority of members of provincial parliament, the National Assembly, who were of Liberal stripe.

We have those two situations and the people of Quebec ousted a separatist government. So we are sitting here in Ontario and saying to ourselves, "What is the right thing to do?" What you are telling me is that the Quebec government really does not have its finger on what people think in Quebec. The federal members of Parliament had no idea about what people were thinking in Quebec, that this is not even an issue in Quebec. That is the message you are bringing to me today.

Hon. Mr. Johnston: Yes. Let me add to that. I was responding to Peter Hogg's notion that there was a profound sense of grievance in Quebec. Being a member of Parliament, I point out that no one has ever raised it with me and it was not raised during the general election. Those are facts.

I think it was there with many of the political scientists, the editorial writers, certainly with the editorial board of *Le Devoir*. But I think if you were to go to the average Quebecker, as you mentioned, in the Gaspé or wherever and said, "What happened in 1982?" I do not think the average person would be quite sure what happened in 1982. I do not think they felt they were not part of Canada from 1982, that they were not part of the Constitution.

Mr. Cordiano: Those are two separate things, though. Let us make a distinction.

Hon. Mr. Johnston: No, but I do not think that was ever a burning issue with them, but it has been made an issue. It has been made an issue by the political process. It has been made an issue by Mr. Mulroney and by Mr. Bourassa.

You made a point which I think is a very important one that I would like committee members to reflect on. You said, "Who speaks for the Quebec people?" You pointed out that the Quebec people said yes to Canada in 1980 in the referendum, but the Quebec government, which spoke for the people of Quebec in 1980, said no to Canada. They were the ones who put the question. They put the question as to whether they should have sovereignty-association, which was their option, and they went out and fought for it and used taxpayers' moneys to promote it and they lost.

It was the people who spoke. People are not speaking on this issue. I must say I would feel quite different about this issue had this been fought out, say, in an election campaign in Quebec, had there been face-to-face debates and had the points been laid down that Mr. Rémillard laid down in Mont-Gabriel in the spring of 1986. That never happened.

Let me just make one other point. This document actually even goes further than the points Mr. Rémillard asked for. I think it was Alex Macdonald, the former Attorney General of British Columbia, who came before the Senate a couple of weeks ago and said, "Quebec came in, negotiated hard for five points and emerged with six." That is, with five demands and got six or whatever.

Anyway, I think the point you make, though, is one that we all should think about in this process. When you are changing the basic law of the country, who speaks. Should it not be a firm mandate?

Mr. Cordiano: But should we have a referendum on constitutional reform every time we are going to reform the Constitution in any fundamental way?

1640

Hon. Mr. Johnston: I think we should at least have an election. We have toyed with the notion of the referendum. You may recall back in 1981 that Mr. Trudeau proposed a referendum, and it was unacceptable to the provinces because the provinces feel that the feds should not be able to reach over their heads to the people to defeat them on an issue. I think there are two sides to that argument in terms of changing the basic law of the country, but if you accept my view that you are basically changing the direction of the Canadian federation, surely to God we should at least have an election on the issue up front where the issues are fully exposed.

Mr. Cordiano: I think it is accurate to say that there was some discussion at the very least. You are implying that in the 1985 election this was not an issue at all, and I would say that there was at least the proposition that the Quebec government, the Liberal Party, would put forward a set of constitutional reforms and that there was a concept at least envisaged there from that time until now.

Hon. Mr. Johnston: The facts are that in the election literature, there was reference to the notion--the five points were not spelled out--to the notion of input into the appointments to the Supreme Court, the notion of recognition of a distinct society, and we in the Liberal Party, in November 1986, after this had become an issue, had a very major debate--you may recall it--as to what we would be prepared to accept. We had caucus meetings, and we had meetings in Quebec in the conseil général, and we came up with a resolution which we understood was acceptable to the Quebec government, to M. Bourassa.

In that resolution there was a recognition in the preamble to the Constitution of the distinctive character of Quebec as the principal but not the exclusive source of French language and culture in Canada. Then it was referred to as a distinctive characteristic or character and it was circumscribed as to what it meant, the principal but not the exclusive source of French language and culture in Canada, and it was not an operative provision or an interpretive provision to the Constitution because there are elements in the Constitution presently which flow from that, such as section 133, section 93, section 22 and so on.

Mr. Cordiano: Would you agree with that? I think you agreed at the time with respect to that.

Hon. Mr. Johnston: Sure, I did. I supported it.

Mr. Cordiano: Then that notion was brought forward.

Hon. Mr. Johnston: That, we thought, would meet Quebec's concerns so that we would all live happily ever after, but what emerged from Meech Lake is light years beyond that. It is the recognition of a distinct society in Quebec, of French-speaking Canadians and a role given to the National Assembly and to the government--that is important by the way; I do not know whether that has been raised here, but the role given to the government is essentially for international dimensions because that flows from the executive and not from the assembly--to promote Quebec's distinct identity, which is an unequivocal statement really of two Canadas and a province which is told, "Promote your distinct identity; make yourself as different as possible from the rest of Canada," which is exactly what the Parti québécois platform was, that they should assert national affirmation by perhaps changing Quebec into a republic within the federation, different institutions and so on, control over communications.

Mr. Cordiano: What you seem to be suggesting is that there is really no difference between what the Liberal government of Quebec today is suggesting in notional terms from what the separatist PQ government was saying under René Lévesque.

Hon. Mr. Johnston: Actually this goes further than what M. Lévesque asked for at the time. As you may recall, in April 1981, the gang of eight signed a package. There were two provinces that were not involved in that deal, Ontario under Mr. Davis and New Brunswick under Mr. Hatfield, and essentially the package that was signed--that is why you keep hearing about how Quebec lost its veto because he went with the amending formula, which was seven provinces and 50 per cent of the population, so he lost his so-called veto and, in return, they agreed that any transfer of powers to the federal government would result in any province being able to retain the power and get full compensation. That is one part of this package available to all provinces, but it is much greater than that.

One could argue from the record that M. Lévesque would have signed on immediately if he had been offered this package of constitutional goodies, but I think the other side of that argument is that he was dedicated to separate Quebec from Canada, so it is unlikely he ever would have signed anything. None the less, on the record he never asked for anything that went this far.

Mr. Cordiano: What you are saying is that the intention of this government would be much different. I would assume that. There is certainly no question about--

Hon. Mr. Johnston: I think Mr. Bourassa and Mr. Rémillard are federalists. They speak in terms of a federal system, but they believe, from everything they say, that you can have a Quebec that is unilingually French as a member of a federation which is essentially English, that you can have special powers and special status for Quebec which will create a kind of confederate relationship with the rest of Canada and that this is a viable option.

I believe they sincerely do believe that. That is a vision of Canada

which is a legitimate view and which should be the subject of this debate. But make no mistake about thinking that it is going to be anything other than that. That is why I worry about Mr. Lederman and Mr. Hogg. They say, "Oh no, it will not be that way." Mr. Rémillard and Mr. Bourassa are quite clear that this is where they want to go, and I do not think the country can survive that kind of federation. That is only my opinion, but that is the kind of debate we should be having.

Mr. Cordiano: One final point: Whether or not one agrees with your opinion, I think we would have to say that certainly there is a certain view in Quebec that would still hold true, because this is an ongoing discussion; to some degree there has been an ongoing discussion. At least now you have a government in Quebec that I would say is much more moderate in its demands. You do not seem to think so, but from my perspective, from where I stand, and certainly from the perspective of many others in Ontario, you have a government in Quebec that is far more moderate than the government of the Parti québécois separatists.

Hon. Mr. Johnston: Mr. Cordiano, let me make a point: I think you are right, but when you draft a constitution you draft it in view of what could happen, not what you would like to have happen or who has been sitting around the table. In other words, the constitutional safeguards should be such that you could have 11 idiots at Meech Lake and the public interest is still protected. That has been jeopardized by Meech Lake.

This package, for example, may be quite neutral in the hands of Mr. Bourassa. I think he will ask for certain things where he thinks Quebec should have additional powers and authority. I do not think they will be outrageous. But you are going to hand this, which I refer to in my notes as a loaded gun, perhaps to Mr. Parizeau. Do you think Mr. Parizeau is not going to test the limits of the "distinct society," the role of Quebec and of the government and to explore those limits to the maximum?

Let me give you some examples. Quebec has complete control over cultural affairs. The government has an obligation to basically promote that "distinct society." What would prevent the péquistes from saying, "We want an ambassador to the United Nations Educational, Scientific and Cultural Organization if UNESCO will have one"?

How can somebody from Ontario, as Minister of Communications, speak for the distinct French-speaking society in Quebec internationally? That argument is already being made. As an area of communications, why should Quebec not have complete control over domestic communications and eliminate the Canadian Radio-television and Telecommunications Commission? I use that example in my annex. Then think about the implications for federalism. We have the CRTC right now. The chairman is André Bureau from Trois-Rivières. Do you think the rest of Canada is going to accept Mr. Bureau from Trois-Rivières should Quebec assume full control over its communications within the province? He would be able to regulate licences and content across the country, but he cannot do it in the "distinct society" from which he has come.

I think this is taking us down the road bit by bit to an unmanageable federation. I use those as examples but we can extend them into many other areas as well: the granting councils, research, education. I think we have to think what could happen, not what we would like to happen or what we think will happen. That is what constitution-making is all about.

Mr. Eves: Mr. Johnston, I again congratulate you for having the courage of your convictions and your nonpartisan approach to this issue. Like

my colleague Mr. Harris, I had an opportunity to talk to you a little bit about this late last week, but I think it is important that we get a few points you made last Friday, I believe, on the public record. Your view, I must say, is a very comprehensive and a very in-depth one. It is not specifically tunnelled or focused as many of the delegations have been. That is not taking anything away from them, but you are looking at the picture as an overall picture whereas many of the delegations and witnesses who have appeared before us have not.

1650

I want to start out, first of all, with a discussion about partisan party politics. I for one, as an elected member, believe that there are some issues that absolutely transcend partisan party politics. Abortion may be such an issue. I certainly think an amendment to the Constitution is such an issue. I gather from the comments you made earlier that you would be absolutely in favour of a free vote in all the legislatures and the House of Commons on this issue.

Hon. Mr. Johnston: I would indeed.

Mr. Eves: With respect to process and the appropriate process--there has been a lot of discussion in this committee about this, about what has gone wrong with the process so far and how we could avoid that in the future--now we have at least a report, unsubstantiated so far, that there are some other secret negotiations going on among four of the provinces to try to amend the Meech Lake accord and persuade the Prime Minister of Canada to do so.

It would seem to me that there is a great deal of common sense to the suggestion of judicially interpreting the Meech Lake accord or parts thereof and having public input and debate before anybody signs such an agreement or an amendment to such an agreement in the future. I think that would almost go without saying. I think that if the accord will not withstand those kinds of tests, my reaction would be: What is it worth and where is the good faith and the understanding that lies behind the accord?

What are your comments with respect to the process and whether or not it should be able to withstand the test of judicial interpretation and public debate?

Hon. Mr. Johnston: I agree with everything you said. One of the reasons I have seized these opportunities, as when we met last week and discussed it, is because--one of the principal reasons I am here is that you people are in a position to do something about Meech Lake. I have calls and letters from frustrated Canadians all over the country because there is no point where they can essentially have input into this system except through you, through the legislators.

The federal Parliament, as I say, has gone, so there is a lot of national focus on what is taking place in this committee, and if this committee does not act to change Meech Lake, then the focus will shift to Manitoba and then it will shift to New Brunswick. Literally, we are talking about millions of Canadians. Some of the media people will tell you, if you talk to them, that they think if a poll were run today, there would be a lot of concern--it might break down about 50-50--and this is in the absence of any real public dialogue.

How many people walk up to you on the street and say, "I am worried

about the Constitution"? Not very many, because it is only when it is brought to their attention, and we are not bringing it to their attention; federally, we have abdicated that responsibility.

All I can say to you, Mr. Eves, is that there is a big role to play here in that regard, to get the issues out, to get public dialogue going and you are able to do something about it.

Mr. Eves: I have one further point, and that is that we have heard, as I said, from numerous delegations that have specific interests. One of the very first witnesses we heard from was Professor Beverley Baines of Queen's University.

Hon. Mr. Johnston: Yes, I have read her testimony.

Mr. Eves: She was concerned about equality rights.

Hon. Mr. Johnston: She came right before Mr. Lederman, as I recall, on the same day.

Mr. Eves: That is right. She was also concerned about charter rights in general, and she came to much the same conclusion as you, that if this committee did nothing else, I think was her parting comment, it should at least, if it did not have the intestinal fortitude to recommend changes, suggest a reference to the Ontario Supreme Court with respect to interpretation of section 16, which some experts say means nothing and some say is only there to clarify and others say, "If it means nothing, why is it there?"

Given that and given that perhaps a court reference could resolve those problems, there is still the issue out there of the rights of individuals in the territories, be it the Northwest Territories or the Yukon. There is still the issue out there of aboriginal rights and their recognition at future constitutional conferences, their pursuit of self-government that is not even mentioned in the accord. There is still the much bigger issue out there of the reduction of federal powers through opting-out provisions and the term "national objectives" as opposed to "national standards" and so on, which really cuts to the thrust of your basic argument as well.

I asked you this question before but I would like to ask you again, to get it on the record of this committee, how is the reference going to solve those problems?

Hon. Mr. Johnston: Let me tell you how I see it resolving them. It is not going to resolve all the issues. There are many things in the accord which you could never make a reference on. It is perfectly clear that the judges are going to come from lists furnished by the premiers. It is perfectly clear that the senators are going to come from lists furnished by the premiers. We can all debate whether that is good or bad, but the Supreme Court is not going to deal with those kinds of issues.

For example, there is the issue of the "distinct society" clause and its relationship to the charter. We all know, who have had any intelligence coming out of the meetings at Langevin, that it was a nonstarter for Quebec. People wanted to say that the charter will prevail. Quebec would not accept it. That is why it troubles me when I hear Professor Lederman, because I know that Quebec has a different expectation. That does not mean that Quebec wants to run roughshod over all the rights in the charter. It is simply that to the

extent of promoting its distinct identity, if there is a conflict between its legislation on sign language, for example, and the charter, which may very well end up protecting signs, that it wants to be able to prevail and have those arguments available.

I come back to the point. If there is a court reference, and the Supreme Court of Canada announces to the Canadian public that yes, in certain circumstances the Charter of Rights can be adversely affected by the "distinct society" clause, yes, the national objectives, say, under the spending power will be set by the provinces, as Mr. Bourassa has said they will be, behind closed doors at Meech Lake or wherever--if that is the reasonable interpretation, then my hope is that Canadians will finally say, "Gee, what is happening here?" because they are not aware of these things at the moment, and force us as politicians, and Mr. Bourassa and the premiers, to go back to the drawing board and start to rework all of the issues, not just those specific ones, such as the court appointments--Mr. Bourassa never asked for those court appointments, for example; also, on the Senate side, I think Quebec probably would be quite flexible in revisiting those. But there is this myth out there that this is a seamless web, as Senator Murray says, and that if you pull one strand of it, the whole thing is going to fall apart.

I think that basically we should try to stop it through the judicial reference, stop the juggernaut from proceeding, and then go back and reopen the debate on all these issues and see if we cannot improve the accord in all of its dimensions.

Mr. Eves: Thank you.

Mr. Allen: Whether Mr. Johnston has been partisan or nonpartisan in coming before us and saying what he has said is perhaps neither here nor there. He certainly presented us with a challenge to constitutionalists that probably is unprecedented in this country: to devise a constitution which ll imbeciles or idiots could work without getting into trouble.

Mr. Breaugh: Present company excepted.

Mr. Chairman: If there were ll.

Mr. Allen: I must say I, like Mr. Cordiano, was very struck and rather taken aback by your suggestion that the issue really had not been particularly strident or lively in the post-1982 period in Quebec and that there was not much interest in constitutional matters.

I would certainly concede that separatists were dejected and therefore were not really having much to do with this kind of debate and, secondly, that those on the federalist side were still waiting for Mr. Trudeau to come across with his much-vaunted promise made in 1982 during the referendum debate, which never of course did materialize. In that sense there perhaps may not have been much happening.

I do not get all that many letters about constitutional matters, and I do not even get much about free trade when you come right down to it, so I am not sure that those measures are very important. I am not sure that the fact that the two contenders in the context of Quebec itself did not raise the issue is particularly significant either. But I think it strikes all of the members of this committee as rather significant that Quebec absented itself from 1982 on from all federal-provincial gatherings and that the moment Mr. Bourassa was elected there was the Mont Gabriel discussion and the five points

came forward; that did not come out of thin air. Your own caucus, as you said, got quite exercised and engaged in the question very quickly. And the French members were often wanting to push the matters further than other members of the caucus wished in terms of response to the five points and the definition of where Quebec wanted to go.

As I say, it took me aback to hear that language. I wondered whether you were not really overstating the case in order to make some points with us.

1700

Hon. Mr. Johnston: No. If someone can produce contrary evidence, I would be very pleased to look at it.

Mr. Allen: I thought I just listed some.

Hon. Mr. Johnston: Sorry. I do not think I have overstated the case at all. One of the issues you raise, which is one we hear frequently, is that Mr. Trudeau made all kinds of promises during the referendum debate which were never acted on. Yes, indeed, he said there will be constitutional reform. But I do not think Mr. Trudeau ever said that there will be special status for Quebec under any constitutional reform.

The whole patriation package and the Charter of Rights and Freedoms and the extension of French language rights across the country--for example, education wherever numbers warrant, which we wanted to get out for these minority groups everywhere in Canada, the application of the first language learned and the Canada clause to prevent mobility and to prevent people to be educated across the country, the opting-out provision for transfer of powers on cultural educational matters--were all responses to Quebec. You might argue that latter one sort of pushed special status, but Quebec was not named. If Ontario wanted to opt out, it could as well.

But never did Mr. Trudeau ever suggest that there would be a package presented to Quebec which would provide Quebec with powers that were different from or greater than those of the other provinces. Indeed, the focus essentially was on bringing Quebecers and French-speaking Canadians firmly into the political, if you like, and economic mainstream of Canada through making a constitution that would be their constitution, Canadian, no longer Westminster, and us giving them these mobility rights that they so badly wanted.

I would contest that. I hear it all the time, so I am not blaming you for it, because I hear it from my colleagues in Quebec; but I do not recall anybody ever making promises of the kind that we have seen in these five points.

Mr. Allen: That was not the point I made, and I did not use the term "special status." I know Mr. Trudeau's celebrated views on that question, and your own. The point is not that he made a lot of promises or that he promised special status but rather that in intervening in the referendum debate, he made it quite clear that there would be constitutional reform and that it would respond to Quebec's needs.

Hon. Mr. Johnston: And that is exactly what he did.

Mr. Allen: Then you have to ask again, who speaks for Quebec? Those who were elected provincially, both at the time and subsequently, have

rejected the proposition that he did respond to it. I know federal members from Quebec took it upon themselves to speak for Quebec at that time, and they had a certain legitimacy in doing that, but they are only part of the voice of Quebec in this federation.

Whatever anybody looking back at Mr. Trudeau's words could have imagined he was thinking, it would be very difficult in the context of a Quebec, which in recent history has sought special powers and been supported both at the Liberal and PQ levels in that endeavour, to believe that something was not indicated in those remarks of Mr. Trudeau, whether he intended them or not, and that that remained on the agenda. That is why, when the Liberal Party came to power and formulated its requests in that respect, it put them in those terms.

I do not see how one can avoid that understanding of matters.

Hon. Mr. Johnston: I guess a lot of my difficulty is, what special powers are we talking about? For example, some of the supporters of the accord, such as Profession Beaudoin at the University of Ottawa, say that Quebec is a distinct society because of different language, different culture and different educational institutions, basically, and that it should have the powers necessary to promote and protect that distinct society.

My understanding of the Constitution, which is also supported by Mr. Beaudoin elsewhere, is that Quebec has all those powers. That is why we have a federal system. That is why Sir John A. wanted a legislative union and George-Etienne Cartier would have no part of it, because they wanted to be able to protect the distinctive character of Quebec in education, culture and language. Well, it is there. Everybody is supposed to discuss powers, but what are we talking about in terms of powers?

If Quebec had come forward with its five demands and said "'Distinct society' means we want full powers over communication but we want international powers in these areas," then we would have something in front of us that we could sit and debate and discuss, but that is not what we are doing. We are saying we are giving Quebec--I think we are, but Mr. Lederman does not--undefined, unspecified powers which, through its role to promote its distinct identity, it will gradually apply over a period of time. None of us knows what they are. Only the Supreme Court will tell us whether any particular power grab, as Mr. Parizeau calls it, is legitimate. I object to that process.

I disagree with special status, as you know, as you mentioned, but that does not mean my views have to prevail. I am saying that if we are going to have special status, for God's sake at least let us know what it is and vote on it.

Mr. Allen: Quebec, of course, did come across with five points. None of them included those more dramatic elements of national status which you are referring to, a national power.

Hon. Mr. Johnston: It was explicit recognition as a distinct society and from that--

Mr. Allen: When you described this as revolutionary and not evolutionary, again I have trouble. If you look at element after element of the accord, and you just referred to a couple of them, do you not discover that they reach back into the Trudeau years? For example, you people in 1978

had your white paper and bill, which included provincial participation in the appointment of Supreme Court judges. You proposed a Senate that would have been half provincial, half federal. You had a whole series of propositions there that underlie some aspects of the accord.

Hon. Mr. Johnston: Bill C-60.

Mr. Allen: Whether the government that you were a part of or Mr. Trudeau accepted the language as special status, it has been part and parcel of Canadian federalism for provinces to evolve in some measure differentially. From the very beginning of their association, they came into the federation with different powers. The language of trying to find a way to describe what Quebec was in the federation was distinctive; it was an ongoing task somehow at every level of federal-provincial encounter. The fact that incorporating just simply language relating to distinct society and that the provincial government has some special role in maintaining and promoting that does not seem to me to be a dramatically revolutionary step.

For the rest of your fears, can they not be taken care of in terms of the traditional dynamics that go on in a federal system? Obviously, Quebec in the past has exercised these claims that M. Rémillard and M. Bourassa say they will now follow. They have their political agenda to fulfil; they have the politics of grandeur to play out in Quebec to exaggerate what they accomplished at Meech Lake, just as in the rest of the country where there is apt to be some backlash, the provincial premiers have got an interest in playing it down. When you go around that circle, are we really in a very different situation than we have been historically all along anyway?

Hon. Mr. Johnston: Let me make one thing clear before I come to some of the specifics. When I said revolutionary as opposed to evolutionary, I was talking about the road we are placing Canada on in this sense, that Meech Lake is like a one-way ratchet towards decentralization of the country, towards a true Confederation, if you like, with Ottawa being a kind of servant of the provinces for the purposes of taxation and distribution of moneys for provincial programs. Over periods of time in Canada, you have seen where there has been an ebb and flow of powers federally and provincially back and forth. We have had very significant transfers of powers--unemployment insurance back in 1941.

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What I am saying to you is that this Meech Lake accord, if it is adopted and becomes part of our Constitution, will not permit any flexibility in terms of, say, transfers of powers back and forth between the various jurisdictions, as we have had in the past. It is a one-way ratchet towards decentralization.

Let me offer you an example. If this had existed in 1940--I guess unemployment insurance was 1940--do you think a province like Ontario, looking at it from the political dynamic point of view, would have agreed to transfer unemployment insurance to the central government if it had had the option of being able to keep unemployment insurance and be fully compensated for it by federal tax dollars so it could run its own programs, set its own standards and so on?

My view, which is almost political axiom, I think, is that politicians by nature are interested in the acquisition and exercise of power and seldom, if ever, do you see any politician voluntarily give power to somebody else. I have never seen it. I am saying with regard to this Meech Lake approach, and I

want you to rise above the fact that your interest is Ontario, in the long term, long after we have gone, do we want to leave a country where the dynamics are such that there is no incentive at any time to transfer powers to the central authority?

In fact, if you do a reductio ad absurdum, theoretically, with the appointment of senators by the provincial premiers, you are actually going to have two Houses 50-50 in Bill C-60. You would actually have in I do not know how many years an upper chamber of equal authority to the House of Commons, except on money bills, which would be appointed entirely by provincial governments, not by regions, not by the people of the provinces but by provincial governments. In other words, it is all immigration clause.

Take a Pêquiste government in Quebec with an immigration agreement that is constitutionalized, which says the reception and integration of all immigrants shall be carried out by the province and they will get the money from the federal government, from federal taxpayers, to do that. That is what is provided for.

If Mr. Parizeau was the Premier of Quebec, how much do you think immigrants are going to know about Canada when the reception and integration of all immigrants are going to be vested with the province? I only throw these out as examples to you. What I am saying to you on evolution/revolution is that we are creating a situation where you remove flexibility from the system and people become frustrated. That is why I say you get revolution. Our Constitution should be capable of adapting to these changing socioeconomic circumstances over the next 50 or 100 years.

I do not think it is with this approach, but I think you have made some points, by the way, in terms of what was offered by Mr. Trudeau in the past--the appointment of Supreme Court judges, the Bill C-60 limitations on the spending power--but they were all done discretely, a tradeoff of one thing against another to try to make the system operate better. We do not have that here.

Mr. Allen: You raised the question of spending power and the shared-cost programs and you referred to UIC. That kind of program obviously predates the era of post-war, shared-cost programming in general. In a sense, it is not a very good example of what the--

Hon. Mr. Johnston: Mr. Allen, I am not talking about it as a shared-cost program. I am talking about it as a transfer of authority.

Mr. Allen: Yes, quite, but that occurred prior to the era of the shared-cost programs as we know them.

Hon. Mr. Johnston: That is right.

Mr. Allen: What I am wondering about the shared-cost programming as outlined in Meech Lake is whether it really is very different to what your own government and Mr. Trudeau himself explained when he rationalized those kinds of programs in 1969, 1970 and 1971. Is it not unlikely, even under your own government, that this kind of transfer of UIC would have taken place simply because you were into the post-Pearson era after the first initial, big major kind of pension plan exercise, which allowed Quebec to do its own thing. Once you got into those precedents, you were not likely to get out of them.

If we got into them and could not get out of them, in terms of

precedents, what is there really so bad about Meech Lake other than simply it consolidates that simple approach to federalism?

Hon. Mr. Johnston: No, I do not agree with you. I think it is a major departure from the approach to cost-shared programs for several reasons. I will agree that, say, in post-secondary education we have seen an example effectively of what Meech Lake would be like; in other words, block transfers of funds to the provinces without criteria attached so that you end up, in the case of some provinces, with the federal taxpayers paying over 100 per cent, believe it or not, of the educational costs of post-secondary education. That was not the intent of it, but that could be corrected because those agreements come up for renegotiation.

But my concern, for example, and this is a personal hobby-horse of mine, is that I think we need a national consolidation of income support systems in Canada as final relief. I tend to move towards some form of comprehensive income security system which no one level of government could afford and which I think requires national standards, which obviously have to be agreed upon by both levels of government.

I do not see that ever happening now under Meech Lake because Quebec would never agree to it. Quebec would say, "Give us the money and we will run our own income system." The federal government cannot set the national standards or national criteria under Meech Lake. Quebec says that as long as it has a program that is compatible, which is the language used--no one knows what that means. Does that mean it just is not incompatible, is not in conflict?

The result of that, Mr. Allen, and what concerns me, is that I think the federal government will not embark upon any such programs. It is not a question of having the provinces take the money and run. I think the feds will say, "Look, if we cannot have it this way, it just will not happen." There may be bilateral agreements then, province by province. The whole kind of national vision of the country, which I think is greater than the sum total of provincial visions, I fear is going to be eroded.

Mr. Allen: It certainly is a legitimate concern and I appreciate the vigorous exchange on it. I would like to pursue it but I know we do not have all afternoon and you probably have other questioners, Mr. Johnston.

Mr. Elliot: There are a couple of things I would like to comment on specifically. To lay out a bit of background for where I am coming from on this, perhaps I am one of the people on the committee to whom your arguments should be directed more directly than to some of the others. Since I was just elected last September 10, and our sixth-month anniversary is coming up this week, I feel this is a terrific learning experience as far as committee work goes in coming to grips with a very important Canadian question.

By your references, you are aware of the fact that we were briefed very completely, as a committee, by experts the first week. We have heard from a variety of other people who have come before us, a lot of them with a very directed point of view from their own particular concern, as opposed to the overview which I would like to thank you very much for giving us. You obviously have looked at the whole picture and have put the thing in context in a way or from a point of view that a lot of the people have not been able to do because they do not have your particular background.

In doing that, a number of things are new information to me. As a

committee member, for example, I always felt there was a profound sense of grievance in Quebec and you stated that this, in your experience, is not the case. That kind of new information is very valid to us.

The other thing is with respect to process. You have stated very succinctly that the type of process that was involved in getting this committee working as it is working is not satisfactory any more. That is shared by the native peoples' groups that have come before us. When the territories talked to us, they shared that kind of concern. There were women's groups. I expect the disabled groups that are coming in this week will be talking about the same kind of thing.

Those of us who are sitting here are listening to all the evidence with a view to preparing a report to the Legislature that should be delivered no later than June. How that report is going to be framed, we have not even addressed yet. We are weighing the different testimony.

The group that testified before us and that I found more divergent from your particular point of view than any others was the alliance of English-speaking Quebecers, which came in and presented a very logical argument from its point of view, which surprised me just a bit because it claimed to represent 800,000 English-speaking Quebecers. There seemed to be a sense, even though they did point out all the examples you did with respect to your disenchantment with the accord, that they would somehow overcome those pointed disenchantments and somehow come to some sort of resolution with the French-speaking majority.

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My real question is, in trying to accommodate that kind of presentation with your own with a view to going on--I view this, as you have stated a number of times today, as an evolutionary process. The Constitution itself was repatriated fairly recently and the charter was in 1982. This is the very first amendment to that and we go on from here to advantage.

We do not have to ratify or do anything with this until June 2, 1990, if my information is correct. We have two years and three months in that interval of time. From an evolutionary point of view, perhaps you would care to comment on it. In that kind of time frame, how could we as a committee best go about reconciling the differences in these two, which I find very divergent, points of view? One is sort of an accommodation kind of thing with what is on paper already. Yours says that it is not valid in almost any part and that we should reject it and start building all over again. Those two things are causing me a lot of concern at the moment.

Hon. Mr. Johnston: I can understand that. I am not saying we start all over again. Let us take the profound grievance I referred to. I was making an observation of historical fact, which I would be prepared to debate with anybody. The issue we now have to deal with and which will be put to you is, if you reject this out of hand, there will be a profound sense of grievance. I think that how this Meech Lake is now dealt with has to be a very sensitive issue for some of the reasons we discussed, in terms of Quebec.

I have gone to French-speaking audiences in Quebec and on French television and so on, and they say, "You say we are not a distinct society." I say, "That is not the issue." I happen to like the distinct society. That is why I live there. As a sociological fact, Quebec is a distinct society. There are other distinct societies in Canada as well. The issue is, should this be

part of a Constitution and should additional powers flow from it that create a special status for Quebec and that also give a collectivity, namely, a French-speaking majority, the right to suppress a minority, or outside Quebec, an English-speaking majority the right to suppress a minority?

I happen to be a Liberal, as you are. In liberalism, individual rights should never be subjected to collective rights, by definition. That is the whole purpose of the Charter of Rights, so an accommodation has to be found there. I think an accommodation can be found that would be quite acceptable to Quebec provided the message is delivered properly, and that is the danger, provided it does not appear there is a rejection of the notion that Quebec is different and is a distinct society, because sociologically it is.

The question is, should that be part of a constitutional document, frozen in time for all time, from which different rights and obligations flow, so that we have a country where the rights of individuals in one part of the country are different from those in another part of the country. I say no, we cannot have that and I do not think most French-speaking Canadians want that. But that is the risk we run with this approach to Meech Lake.

As far as the alliance and others you have heard from are concerned, I think they are toughening their position a little bit. They were very reasonable. They hope to work out an accommodation and so on, and I accept that, but I have told them I think they have to be a bit stronger in their representations, and I think they are getting a little stronger in their representations.

We all like to be accommodating. The English-speaking people in Quebec, in my experience, are doing a great deal to promote, if you like, the French language in Quebec. If you talk to your Quebec friends, I would be surprised if you would find any of them whose children are not fluently bilingual today, which certainly was not the case in my generation. They are in French schools. You have immersion programs elsewhere, but in Quebec there is a real effort of those English-speaking people who have stayed to essentially accommodate the francophone majority you refer to.

But I do not think you should ever allow, in your Constitution, collective rights to dominate individual rights in the name of accommodation. History is replete with examples of where you have a tyranny of a majority which becomes entrenched over a period of time. That is why I say, in my judgement, those English-speaking rights and all other minority rights--the sexual equality rights and francophone rights--across this country are not adequately protected under Meech Lake; and if so, these individuals rights, I would hope this committee will come out and say, "Look, we want to defend by an amendment the rights and liberties of individual Canadians in keeping with the spirit of the charter."

Mr. Offer: Thank you very much for your presentation and response to the questions. Most of my questions have already been asked, but I have a question. In dealing with some of the responses, it is surely not the position that the Charter of Rights guarantees rights absolutely certainly because of the existence of section 1 that speaks to a limitation.

I think it was in response to Mr. Harris's question, one of the first responses, you talked about a distinction in dealing with allowing the courts in an evolutionary way to interpret the Charter of Rights. Yet that ought not to be the case with respect to the accord.

Hon. Mr. Johnston: With respect to the distinct society.

Mr. Offer: Can you expand a little bit as to why it ought not to be left to the courts in an evolutionary fashion in drawing the impact of distinct society in keeping with the Charter of Rights, the guarantees and the limitations as indicated there?

Hon. Mr. Johnston: These are issues or matters of degree. You may recall that when the charter was created there was a great debate in this country about whether we were not transferring too much authority from the legislators to the courts, and that debate rages on. There have been disappointments in some cases. There has been rejoicing by some groups at the result of court interpretation and, as I say, in other cases there has been great disappointment.

I only need to cite, for example, that the New Democratic Party was upset because of the right to strike, which was said not to be part of the right of association under C-124, as I recall the judgement. It said, "This is not what we expected."

I was in debate with Mr. Romanow and some others on that issue, and the point I made was the charter at least allowed that day in court, otherwise the law of Parliament would have prevailed. There is no right to strike, period. At least, there was a charter challenge. Now, you can say, "Well, maybe the charter should be amended if the public feels that the right to strike should be fundamental right of the charter."

But there are these specific kinds of rights which depend very much on the evolution of public morality over a period of time, public values and the values of Canadians, and the courts are going to have that input.

Now I say, here with the distinct society we have moved light years beyond that because we have said, essentially, that a provincial jurisdiction will have rights and authorities which are undefined which the courts will give it, but by virtue of this provision.

Again, of course, it is indeed a matter of degree: where do the legislators stop exercising their authority and where do they start? I think, as I think Mr. Breaugh put it earlier, that legislators should put it in the language to say what they really feel this means. Of course, the debates in the legislatures will help the court to interpret what we mean.

Can you imagine Sir. John A. Macdonald, if he had been asked, "What does peace, order and good government mean?" Do you think he would have said, "I haven't the faintest idea, but some day the judicial committee of the Privy Council will tell us." I do not think so. I go back and look at those Confederation debates and the whole thrust of what they were trying to do, it seems to me, is quite apparent. But we have a "distinct society" clause and that is exactly, not perhaps in those specific words, but damned close to what our people are saying--the people who emerged from that meeting. We do not know what distinct society means, as some day the court will tell us, and the implications of it are vast because they actually can create an unbalanced federation and that is what I regard as totally unacceptable.

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Mr. Offer: Just as a supplementary, when you talk about the implications being vast, surely the whole question of distinct society could

be argued that in dealing with that as an interpretive tool that it is truly to be used in dealing with the particular issue at hand. I do not think there would be an argument in that respect, keeping in mind that there are certain rights and freedoms in the charter. I know that brings in another question, but in dealing with the distinct society and in dealing with your particular presentation today, certainly when one takes a look at a vast leap ahead, it could very well be argued that there are right now protections within the charter available to those. To ask for a definition of distinct society in the absence of a particular fact situation is not to give any greater certainty than we have right now, because the fact situations will always change.

Hon. Mr. Johnston: Let me counter your question because you are talking in terms of the charter. But let me ask you this question. Do you think that the Supreme Court of Canada faced with, say, the application of the peace, order and good government clause for a national basis--those of you who have studied constitutional law probably recognize that there were really two schools as to the application of that. One was the so-called "emergency doctrine test," which it was limited to for many years which meant in the case of war or famine, I think were the examples given by Lord Watson, the federal government could use the peace, order and good government clause. Then there was the "national dimensions test," so-called, which is where the matter is of national concern, such as temperance, that you could use the peace, order and good government clause.

Now you have the peace, order and good government clause which is subject to interpretation, in the case of Quebec, as a distinct society, and with a rule to promote its distinct identity. If, for example, you again had an AIB--you will remember the Anti-Inflation Board appeal which went to the Supreme Court--do you not think that the Supreme Court might be inclined--because this is not limited, as Mr. Bourassa pointed out, to language issues--to apply it differently in the case of Quebec than in the case of Ontario?

If you could satisfy me that there would be no different application to Quebec or to Ontario on that or any other factual situation with respect to powers, then I would be a lot more comfortable. Mr. Lederman gives me a great deal of comfort--well, he does not give me a great deal of comfort, because I think he is wrong. If I thought he were right, he would give me a great deal of comfort. Quebec does not think that. Quebec thinks probably that the "peace, order and good government" clause should be reduced in terms of its application to Quebec to, say, national emergencies. That national dimension test might apply with respect to the application of that clause elsewhere in Canada. I think that is a reasonable position for Quebec to take, and I do not think that is where the federation should operate. You may not agree with that.

Mr. Offer: In response, whether one agrees or disagrees, I guess the nub of the issue is that even if that question were able to be answered definitively to you and to your satisfaction, you might, on some secondary thought think, "Ah, but what about in this fact situation?" My point to you is that if that is the certainty that you are looking for, then in all practicality, in all reality, and in dealing with the historical evolution of court cases themselves, there is not that type of security, using your example.

Hon. Mr. Johnston: Yes, but why should we add to that lack of security by creating two societies, one distinct? "Distinct" means separate, by one definition of it, certainly in French if not in English. Why should we incorporate such a concept in our Constitution and attach legal consequences to it? Because you are right; it does create all these uncertainties.

Mr. Offer: What you are now saying is that if we cannot have the certainty with respect to distinct society, then we should not have the "distinct society" clause in the agreement itself.

Hon. Mr. Johnston: I do not think the "distinct society" clause should be in the agreement.

Mr. Offer: I was just questioning, because in your particular submission today it very well revolved around distinct society, but in the last three of four lines you say that we should take some reference before the courts. That is something much different to saying that we should not have anything to take out as a reference.

Hon. Mr. Johnston: You also will agree with me that the "distinct society" clause should not be in the Constitution, because I think the court will say that the "distinct society" clause could override the charter in certain circumstances, that it could create additional powers for Quebec as a distinct society and that the right to promote it also involves international representation. In other words, a form of sovereignty-association could emerge from its application.

If the court were to say that, then I think Canadians would agree that the "distinct society" clause should not be in the Constitution in that form. It might be preambulatory as we had it in November 1986, citing the distinctive character of Quebec as the principal, but not the exclusive, source of French language or culture.

My whole purpose of getting it before the court, hopefully, is for the court to scare the hell out of everybody by making them recognize that they are embarking on a slippery slope with the "distinct society" clause.

Mr. Chairman: I will accept one brief supplementary, after which we will allow Mr. Johnston to relax.

Mr. Allen: Forgive us for prolonging this, but you are not here every day and you have come from a distance. Let me try something out on you with regard to individual rights, group rights, the Constitution and section 15 of the charter. You are aware that section 15 has two parts. The first part affirms all the individual rights. The second one says this "does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Obviously, what it has in mind is that there may be some apparent differential in program and legislation in order to enhance affirmative action for a disadvantaged group. In view of the fact that Quebec has existed as a province that houses the one really substantial and different minority that functions in a language daily and therefore has special problems in the context of North American language and culture, what essentially is the difference between the recognition in the Constitution of that distinct society and some additional powers for Quebec that might conceivably flow through that? They will obviously be adjudicated from time to time in the courts and have to exist in tension with federal and other provincial initiatives. What is the difference between that and what the second subsection of the equality rights statement of section 15 says?

Hon. Mr. Johnston: As I mentioned earlier, Quebec has full authority

over language now, with the exception of section 133 and section 23. Section 23 is limited in Quebec to the so-called "Canada clause," which permits people whose parents were educated in English to be educated in English, for example, who come into the province. I think, and some of the constitutional authorities like M. Beaudoin would say, in Quebec we have everything we need on language.

If they are struck down, for example, on signage in the bill before the Supreme Court of Canada, they might say they need more in that regard and they probably would rely upon the "distinct society" clause, although, as you know, they also have the "notwithstanding" clause, which they have suggested they might apply. I am beginning to sound as if I am representing a particular disenfranchised group. That is not my intent here today. I want to point out the problem of the distinct society and the anglophone minority.

The fact of the matter is that I do not believe that the promotion of the French language in Quebec requires the suppression of any minority rights in Quebec. I think it could very well involve affirmative action of the kind you talked about. For example, it could involve a law which says that you have to have French on a commercial sign but you can have another language as well. In fact, there is an article by M. Dussault, who was a counsellor for the language office in Quebec, in La Presse in December. He said he could only find fascist states that had ever had a law which said you cannot by law, on pain of penalty in prison, put up a sign in your own language.

That is basically what the intent of the current situation in Quebec is. I do not accept that. I have no problem, and I do not think the English community has any problem, in promoting French in every other which way. I think that is entirely compatible with the notion of section 15, but those powers are already there.

Mr. Chairman: We want to thank you very much for coming and spending a good deal of time with us. We have had a number of phrases that from time to time have come up in our hearings. Mr. Breaugh brought to our attention a few weeks ago the "hallucinatory nature" of constitution-making, and you have added, I think, a unique one in terms of the "one-way ratchet." Perhaps at the end of all of our hearings we will be able to have a dictionary of terms.

I want to thank you very much not only for the oral presentation you made, but also the annex and, particularly, for engaging in what was a very free-flowing and frank discussion. I think at this stage in our hearings we are really into and need that kind of exchange. It was extremely helpful and we appreciate your coming very much.

Hon. Mr. Johnston: Thank you. May I ask you a question before I leave.

Mr. Chairman: Yes, please.

Hon. Mr. Johnston: Do you intend, or has there been any thought of, inviting any official spokespersons from Quebec before your committee?

Mr. Chairman: We have been discussing a number of things in terms of people we would like to have appear before us. One of our dilemmas as a committee of the Ontario Legislature is to what extent people's expectations are that we should be doing a cross-country tour, as it were. There are those who have commented that they feel we should not do too much with representatives of Quebec unless we were going everywhere else. I think we are

mindful that is a very important area for us to receive views, but we have wanted to be somewhat careful in how we handle it so as not to create expectations that we really can go everywhere.

Hon. Mr. Johnston: I can understand that, but I have been rather anxious, not to try to shoot things down, but simply to make decisions clear. I think M. Rémillard would be a very important witness who might come voluntarily before the committee to say: "You have heard Johnston say what we think about the distinct society. We will tell you." These deliberations, as you know, can play a very important role in the interpretation of Meech Lake, should it go ahead in its present form, which is what I fear.

Unfortunately, at the present time we have views being expressed in Quebec City, as Lise Bissonnette pointed out, other views being expressed in Ottawa and other views being expressed here. I think it would be very helpful if you could have the Minister responsible for Canadian Intergovernmental Affairs, who is one of the chief architects of this, come before you.

Mr. Chairman: I think that is a suggestion we will look at.

Hon. Mr. Johnston: Far be it for me to set your agenda, which I know is very heavy, but I have been hoping that at some public forum that would take place. It has not happened yet.

Mr. Chairman: We still have quite a bit of time before we make our report, so we will take that under advisement.

Hon. Mr. Johnston: Thank you very much.

Mr. Chairman: Thank you very much. We will return here tomorrow morning at 10 o'clock.

The committee adjourned at 5:43 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, MARCH 8, 1988

Morning Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Morin

Clerk: Deller, Deborah

Witnesses:

Individual Presentations:

Orenstein, Ian

Silver Dranoff, Linda, Legal Counsel, Linda S. Dranoff and Associates

From the Ontario Metis and Aboriginal Association:

Recollet, Charles, President

Reid, Chris, Constitutional Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Tuesday, March 8, 1988

The committee met at 10:08 a.m. in committee room 1.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good morning, ladies and gentlemen. If we can begin today's session, I invite Ian Orenstein to come forward. Welcome to the committee, Mr. Orenstein. We are happy to have you with us. As far as our procedure goes, if you would like to present your submission, then we will have time for any questions that might arise out of your presentation.

IAN ORENSTEIN

Mr. Orenstein: I should say that I am a freelance broadcaster at CIUT and formerly of CKLN. I am also a full-time student in radio and television.

Mr. Chairman: CIUT is the University of Toronto radio station?

Mr. Orenstein: That is right.

Mr. Chairman: I have listened to it.

Mr. Orenstein: The title of my document is New Jerusalem, Yes! Meech Lake, No!

Quebec did not sign the 1982 constitutional change. That is why some people are supporting the Meech Lake accord with all its flaws, but the Supreme Court of Canada has ruled Quebec a full participant in the Constitution since 1982.

I have asked myself, can there remain any reason for people who want more democracy and power for the working class to still support Meech Lake? No. If you want working people and their families to get more rights and be able to participate in national programs, you have no business supporting the present proposed constitutional changes.

Never did I know you would stoop so low to support a document that will make it impossible for a New Democratic Party government in Ottawa to implement party policy.

My friends, I want to put forward to you three main flaws with the Meech Lake pact. The first is that it takes away federal spending powers in the area of social policy. When the New Democratic Party of Canada forms a national government, it will have provincial governments opting out of national programs. The federal government would have to reward those provinces for sabotaging the national plan.

Former Prime Minister Trudeau called it a patchwork quilt for Canada. On The Journal last May he asked Barbara Frum, "Do you know why PEI can't afford a universal day care program?" Barbara Frum answered, "Because they have too

small a population." There can be no national programs if large provinces pull out of programs and are given money for doing so. The remaining provinces could not sponsor the programs. The improved Meech Lake document still leaves crucial decisions in the hands of the courts, says Saskatchewan NDP leader Roy Romanow. Mr. Romanow says the clause on federal spending power is still "very loose."

New Democrat MP Ian Waddell, who voted against Meech Lake, says Mulroney gave half the country to the provinces and the remainder to the United States with free trade. Mr. Waddell is consistent. He also voted against the 1982 enactment of the so-called bill of rights. If anything, it is mostly a bill for the right wing.

Almost every case brought before the courts on the bill has come down against workers and for the right wing. The National Citizens' Coalition won against trade unions' rights to collect union dues for political activities. The former program of collecting union dues is called the Rand formula. The courts have changed it to the Ayn Rand formula.

Another former right of workers declared unconstitutional was the right to strike. We do not need more anti-working class constitutional changes like the Meech Lake amendments. We need more power for the people.

The second flaw with Meech Lake is that it is part of the Americanization of Canada. As I have already mentioned, free trade is Mulroney's way of handing Canada over to the US. Meech Lake is part of that plan. Let me quote from a document, "The Senate of the United States shall be composed of two senators from each state chosen by the Legislature thereof...." Sound familiar? That is from the US Constitution of 200 years ago, article 1, section 3.

Let me quote from Meech Lake, "...appointments to the Senate come into force, any person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted by" the governments of the provinces. I guess Mulroney loves the US so much that he requested some statements from the American Constitution be included in Meech Lake. The problem was he got the original Constitution of 1787.

Eventually all our senators could be picked by the provinces and we could have the situation of the American Constitution of 1787, which stated, "He---the President---"shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court...."

If we pass the Meech Lake amendments, we will have the provinces using the Senate as a proxy to keep control of the federal government, as in the US. The US did not have a Constitution to have direct elections to the Senate until 1913. Do we have to wait 130 years before the provinces no longer have the job of puppet masters?

Meech Lake gives more power to the provinces but nothing new to the federal government. The late Prime Minister Lester Pearson said, "Ontario and Quebec...were as much creatures of Confederation as the federal government." The western provinces were "the creation of the federal government--not the reverse."

Will judicial supremacy lead to abominations such as the Dred Scott decision of 1857 in the United States? Seventy years after the framing of the Constitution, the majority of the US Supreme Court opinion maintained, "The right of property in a slave is distinctly and expressly affirmed in the Constitution." Are we not already seeing this in Canada with our court system's denial of the right to strike?

The third flaw with Meech Lake is that the process is undemocratic. Mulroney says that even if there are flaws in the document, we cannot change it. As Pearson pointed out, the provinces were created by the national government, so why should the provinces have a say when and if the Yukon or the Northwest Territories can become provinces? In 1982, the debate on the Constitution allowed people to get changes, like the inclusion of women's and natives' rights, which former Saskatchewan NDP Premier Allan Blakeney demanded be added to the Constitution after the people demanded it.

Over the weekend, the Manitoba NDP passed a motion that called on the Manitoba NDP government "to take steps to deal with the flaws in the accord" prior to having the Legislature make decisions on the accord. The government of Ontario can learn from Manitoba and do the same.

Unanimous support of any future constitutional changes, if Meech Lake is passed, is also undemocratic. Every constitutional conference since 1927 has not been unanimous. The only reason there was unanimous support for Meech Lake is because Mulroney, to be nice, gave over federal powers to the provinces without representing the national government's interests. It was left to Ontario and Manitoba to push for stronger federal spending powers. Unanimous support for future changes closes the door on democracy.

Instead of Meech Lake, let us open the door, as Tommy Douglas used to say, to a new Jerusalem. Let the people of Canada into the constitutional process. If they want a strong federal government, put that back in the Constitution. Let us make the changes that put the working people first.

Another former NDP Premier of Saskatchewan and former national leader of the New Democratic Party, Tommy Douglas, said: "As long as we maintain an economic society founded on greed and selfishness and on brute force, just so long as we can expect to have class warfare within the nation and civil war on a world scale between nations, the only hope is that we shall try to build a new kind of society...the only hope lies in a society based on co-operative living." Those are the kinds of constitutional changes we need.

Pauline Jewett, in an interview last week, said now that she is leaving the House of Commons, the only time she wants to be a member of the Senate is as part of a demolition team. With this unanimous clause of the Constitution, another NDP policy, to abolish the Senate, will be made unconstitutional. We do not need it handed over to the provinces or elected. Just give NDP MP Pauline Jewett her wish and abolish the Senate.

Instead of power struggles between the two higher bodies of government, there is a greater need to give municipalities at least some recognition in the Constitution. Work towards restored union rights. The right to breathe clean air should be in the Constitution. Animals and children need rights in the Constitution. Public ownership should be stronger and defined in the Constitution. We need more democracy, not unanimous votes of the powerful.

Tommy Douglas used to quote a line from Tennyson. I have just changed it

a little: Courage, my friends, 'tis not too late to make a better world. Thank you.

Mr. Chairman: Thank you very much for your presentation. You have also introduced a number of ideas that we have not had raised before, particularly at the end, in terms of municipalities and some of the other areas, and more specifically, the question of union rights and strike rights and that sort of thing.

Mr. Allen: I thank Mr. Orenstein for bringing forward his brief this morning. I notice that today we have a fairly heavy representation of individual, private citizen presentations. I think it is extremely important that we listen to as many of those individual presentations as possible and see where people are coming from with regard to Meech Lake.

I gather, both from the title and the contents, that Mr. Orenstein's New Jerusalem, Yes! relates to his comments at the bottom of page 4, where he is interested in a society that is based on more co-operative principles. That being the case, I wonder if you could share with us your views as to what kind of redistribution of powers in the Canadian Constitution that might imply.

You seem to have running through it, although you do not say it quite explicitly, some partiality for a very centralized federation with the federal government exercising national powers in order to establish national programs, and yet, of course, in fact we do have provinces and they do have jurisdictions. Every time the federal government moves these days on what would appear to be the priority issues of the day--social issues, for example, and social programs--it begins to tread on provincial ground.

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One of the major problems in the rebalancing of Confederation, as you probably know, has been that whole issue of the emergence of social programs to the fore on our national agenda in the course of this century, in the course of which the provinces became bigger and bigger players, but with limited resources because of the way in which the tax jurisdictions have been set up.

In order to achieve your goal, how would you go about redefining those jurisdictions so that one had municipal, provincial and federal governments working together, and at the same time, no one part of the federation dominating the others? I am not sure I see that coming through clearly in your statement.

Mr. Orenstein: First, if I understand it, a lot of social policies are constitutionally in the charge of the provinces because when they first came out with them, they said they were unimportant. They said, "We will not give it to the federal government; we will give it to the provincial governments."

Since then the federal government has said, "Now that we have built the railways, we have to get into social programs." I believe that because there are poorer provinces, the federal government has to have the right to participate. Just because of that mistake when they formed the British North America Act is no reason we should continue that. When it comes to co-operation, what the provinces used to complain about, the situation they

had with the federal government of their being like children and being told what to do by Ottawa, is what it is really like for all the municipalities.

The provinces can take away municipal regional governments, or give them, without anybody taking them to court because there is only one sentence, I think, in the Constitution for municipalities. It says that they are the children, or something like that, or the responsibility, of the provincial governments which can do whatever they want.

The way in which I see regional, municipal and federal governments working together is that the federal government would have a planning policy that, when it comes to any one policy where there is a constitutional conflict with the other governments, they would work it out. There would be a guarantee that poorer provinces could have programs. If richer provinces wanted to opt out, they could opt out but they could not get the money, because the federal government raised those taxes and should not be giving back money to provinces that somehow decide that either they are going to do a better program or something totally different, but that say they are going to do something. Meech Lake does not say who is going to decide what is the equivalent program, and they could say, in the case of day care, "This is going to help day care and not be exactly the same program."

Tommy Douglas, when he was talking about it, was more and more wanting people to participate in politics. I think if we somehow got municipalities, which is the closest government to the people, into the Constitution, then maybe the others would start being more like municipalities. For example, a town hall meeting is not as structured as a parliament. In a parliament you are allowed to watch your representatives, but in town hall meetings, the people who show up talk to their representatives while they are in the room. I think we should somehow have--not go to referendums, but our representatives should hear more of what their constituents want, such as more power.

Mr. Allen: Would it really be a co-operative federal state if the federal government were able simply to say to the provinces, "This is what you have to do, period, to get the money," or is it a more co-operative federal state where the formula is fairly flexible and both rich and poor provinces can lay down their own terms in the course of negotiations for the receipt of dollars? I am mindful that it is not just rich provinces that opt out of programs; it is also poor ones. The problems we have had fielding a national day care program lately have been more the difficulty of poorer provinces coming up with the dollars to fund what, after all, would be a very expensive undertaking. The rich ones can always somehow make a go of it with one program or another or one set of objectives or standards or another.

My sense is that while one might not like all the nuances in the Meech Lake spending power shared-cost program section, is there not a fairly flexible formula that allows for the kind of co-operative give and take that is going to be necessary in establishing programs that are (a) national and (b) have some degree of compatibility for local circumstances and situations?

Mr. Orenstein: In the case of Quebec and Ontario, for pension plans and medicare they said they were going to establish their own programs, and they fought over that. But I do not think they got federal money to fund those things; I think they decided to be separate.

I think part of it is that the federal government should have the right to keep that money if provinces opt out, rich or poor, if it was legally collected under federal taxes. If they were provincial taxes, I can see giving

them back because it was the provincial government that collected them. But any taxes collected by the federal government should remain with the federal government.

Mr. Offer: Your first concern is really a carry-on of the discussion you just had with Dr. Allen with respect to the federal spending powers and taking away federal power in certain areas. As you know, the particular provision in the accord talks about areas within exclusive provincial jurisdiction only. Using your argument and your concern, does this not really support what you are saying by taking that next step, by saying, "Now we have it clearly in the Constitution that the federal government does have the right to expend money in a cost-sharing program in areas of exclusive provincial jurisdiction"? As such, where it was not in the Constitution before, it is now in the Constitution.

Indeed, far from taking away federal powers, it could very well be argued that it strengthens the federal powers on one hand, yet, on the other, allows particular provinces to opt out--that is correct--in these circumstances as long as they meet with the particular national objectives. So we have a flexibility on one hand, yet on the other hand we have a clear indication that now the federal government does have the right through the Constitution to spend in areas of exclusive provincial jurisdiction.

I am wondering what your thought is in those terms, that this particular agreement does, in fact, give the federal government a power which it did not have before.

Mr. Orenstein: Well, in the case of legalisms and constitutions, I-- have been studying that a written rule can be more inflexible than flexible. British law has a lot of things unwritten in it and American law has them written, so the Supreme Court ends up with more power and the legislators less. Before they would negotiate between governments, but it is now going to be in the hands of the courts on that part of the document. Then, when it comes to powers to people not representing the government, they have to have their powers defined, because they cannot defend themselves.

But governments in the past would decide what they were going to do on social policies and whether that would be federal or provincial. Sometimes provincial governments wanted to take over things that were written for the federal government, as in the case of broadcasting. A lot of provincial governments say it is a provincial constitutional right, the federal government say it is theirs and they negotiate it.

With this new change, wherever it is provincial law that they do the raising and the spending on social policies, the federal government can now do programs whether the provincial governments want to participate or not. It may be more flexible in that it is now recognized, but I think, because of the way it is written, the federal government is now taking a back seat instead of, as in the past, negotiating by saying, "This is a program that our party got elected to do." It is almost like saying, not just of the New Democratic Party but of other parties that have national policies in their program, that they are unconstitutional and we cannot do it because of that one resolution or amendment in Meech Lake."

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Mr. Offer: OK, thank you.

Miss Roberts: My question is with respect to process. You have indicated that the process was flawed, but you have also indicated that there are many things in the charter and the Constitution as it now stands that you would like to see changed.

Just forget about Meech Lake for a while; forget about its existence. You have many changes that you would like to see. How are you going to get those changes? What is the process?

Mr. Orenstein: If Meech Lake gets passed, it will have to have the unanimous consent of 11 governments.

Miss Roberts: I ask you just to forget about Meech Lake, OK? How are you going to get the right to strike into the charter? Do you do it by going through the provincial government, having a resolution? Have you thought about the process?

Mr. Orenstein: Before we get down to exactly what I would want, I would want more people to be able to participate. Hearings like this are nice, but what I say or whatever someone else says is not going to be written down and they are not going to say: "Oh, that is a good idea. We'll put that in."

You can suggest at the end, "There are flaws and maybe you should change it." But if we had a big discussion between elected people and nonelected people getting together and saying, "This is what we want," then they brought that forward to the general population and then got that included in a Constitution, we would have a more democratic process than having a document brought together by our elected representatives and then saying: "Do you like it or not? We are going to enact this unless you see some major flaw."

You are asking people what they think of a fait accompli, and I think we should have people able to discuss it all across the country, maybe for a whole year. They would have meetings all over the country and tell their representatives, and also have official meetings, not just nice suggestions.

Miss Roberts: So you are suggesting, if I might just put it in more structured terms, a federal commission of some type that would go across the country for a year trying to set up some changes or some thoughts on the Constitution, and it would report. Is that what you are suggesting?

Mr. Orenstein: That is legally what we have now, but I was thinking of something more expanded on that. In the case of municipalities--I think in Ottawa--they can have community associations that can participate in that. If you want to structure your streets--which ones are going to be one-way, where they are going to put blocks in so they will not have through traffic and so on--they listen to it and end up saying, "OK, that is what the people who live there want," and that is what they give them.

We should have something like that in Canada. In Quebec they do want special status and we find out what they mean by special status, not just the Quebec government. We find out if Quebec wants more than just that, but within Confederation, of course.

Miss Roberts: OK.

Mr. Chairman: I want to thank you very much for coming in this morning and for presenting your brief. Thank you as well for answering the questions that the committee has put.

Mr. Orenstein: Thank you.

Mr. Chairman: I then call upon our next witness, Linda Silver Dranoff, to come to the chair.

Ms. Silver Dranoff: Good morning.

Mr. Chairman: Good morning. Welcome to the committee. We have two documents which you have provided: the presentation as well as the article that appeared in the Globe and Mail last September.

Ms. Silver Dranoff: That is right.

Mr. Chairman: Everyone will shortly have that. I am going to ask you simply to make your presentation. We will follow that up with a period of questions and, we hope, cover all the points that you want to raise this morning with us.

LINDA SILVER DRANOFF

Ms. Silver Dranoff: Thank you. While I am here as a private citizen, I am associated with the Canadian Coalition on the Constitution and a coalition of women's organizations which are fighting against the Constitution. But I feel very strongly that private citizens should speak out on this issue because it affects the future of Canada so much, and I speak as much more than a member of any particular group.

I am very proud to be a citizen of Canada and I feel that it is the national future that we are talking about when we deal with the issue of Meech Lake. I am concerned that the public interest of Canada as an entity has been underrepresented in the negotiations of those who were dealing with and arrived at the Meech Lake accord.

While I am here as a private citizen, I think it is always useful to understand a person's background and where her perceptions come from. You could define me as a woman and dismiss me as representing women's interests only, but I hope you will not do that. I am also a practising lawyer, which helps me to understand what happens when legislation comes to be interpreted in the courts.

I am Canadian-born and educated, with an honours degree in history from the University of Toronto and an LLB from Osgoode Hall Law School, and throughout a student of politics. My grandparents were immigrants to this country, and I remain grateful, two generations later, for the opportunities I have had in Canada. If you want to know still more about why I feel compelled to speak out, understand that I am a mother who wants her daughter to live in the best possible Canada.

I do speak with a heavy heart for the public interest and against the accord with everything I know from this background and can envision. I feel that I speak for myself, but also for others who feel disenfranchised and ignored by the constitutional changes which are threatened. This is why I oppose the accord, in a summary fashion. You have heard many details, I am sure, throughout your hearings.

As I see it, it drastically changes our constitutional structure in a way which decentralizes our country, threatens national social programs, creates disharmony in our nation, undermines the Charter of Rights, shifts the

balance of powers to the provinces from the federal government and from governments to what I see as an oligarchy of first ministers. It satisfies Quebec but creates disaffection among women, ethnic groups, native peoples, aboriginals, the territories and those who expect to benefit from the charter, who are many, many in our society. And it was, as I see it, created undemocratically.

The accord is not a simple matter of the recognition of Quebec as a distinct society. That is not all that Quebec asked for and got. Quebec's Minister responsible for Canadian Intergovernmental Affairs set out a list of five things which Quebec wanted. Those five were granted in the Meech Lake accord, but that is not all that was done. Not only did Quebec get every single one of its requirements met, but every other province also got what Quebec asked for as the price of making the concession to Quebec.

My concern is that I do not think there was a really adequate feasibility study done of what the impact would be of giving to everyone else what Quebec wanted. I think those who met and agreed to the accord may have thought that list of five would be satisfactory to give Quebec, but I do not believe that any consideration was given to the impact on the country as a whole of giving the same five to all the other provinces.

In the process of the negotiations, the people we elected to govern this country--and by that I mean not only the national government but also the provincial governments, which I feel have an interest and a stake in our national future and not just in the provincial future--these people to whom we entrusted our community have diluted national powers to such an extent that we are in danger of voluntarily paralysing ourselves as a nation.

We have to remember that Canada is not the country it was in 1867, when we were basically English and French and the Constitution at that time was intended to protect that particular mix to continue. It is not the same ethnic mix today, and no amount of constitution-making can make it what it is not.

For example, in 1867 women were not important in the constitutional scheme of things. We did not even exist, in fact. Until 1929, when we were defined as persons, we were not considered a part of the Constitution at all. Women did not get a fair shake under the 1960 Bill of Rights, but in 1982 we got guarantees of equality rights in the charter.

Now those guarantees have been eroded, because the words protecting Quebec as a distinct society will take precedence in any judicial interpretation of the charter. So women have lost out in this current round of constitution-making if the accord is ratified. I say "if" very definitely because I am certainly very hopeful that what happens in Ontario will have an impact on stopping it from being ratified.

The other thing different now from 1867 is that we did not have a charter then. It almost did not come into being at all in 1982, and it is clear that the provincial premiers did not want the charter in 1982, nor did Quebec want it. It was only when agreement was reached that the provinces could opt out of the charter by invoking the section 33 "notwithstanding" clause that the charter was permitted by all provinces but Quebec to see the light of day. Since 1982, Quebec has taken full advantage of the "notwithstanding" clause.

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The charter has been eroded by the "distinct society" clause, which will take precedence, but also by the other constitutional changes. This is because all the changes except the multicultural saving clause were amended by changing the 1867 and 1982 constitutions, and the recent separate school funding case held that these constitution acts take priority over the charter.

We should not forget that the charter is a very important document which guarantees fundamental freedoms, legal rights, democratic rights like the right to vote and the requirement of elections every five years, mobility rights and equality of status rights and privileges for both English and French as official languages in Canada. It guarantees equality rights for women and for everyone, the right to challenge laws if the laws themselves or the procedures by which they are applied do not protect women the same as they protect men, or protect the old as they protect the young, or protect the disabled as they protect the able-bodied or those whose race and colour are different from the majority.

There is no doubt that the accord is a complicated document with wide-ranging implications, but then how could anyone accept the simplistic statements of pro-accorders that it is only to get Quebec into the Constitution? How can we respond complacently to cajolings to trust the people who signed the agreement, that they did not intend to hurt the country and so therefore the accord will not hurt the country? These, in my view, are meaningless reassurances and unresponsive to the concerns of vast numbers in our society who are concerned about the impact of the accord.

My concern as well is that the first ministers, in their responses since the accord was originally signed, behave as though they took an oath of allegiance to each other to force the accord through and, in the process, they may have forgotten their oath of allegiance to Canada.

Those who favour the accord, even those who feel that it should be passed, gloss over the concerns of the rest of us about the non-Quebec terms of the accord. They feel that since Quebec has been made happy by the accord, then it is acceptable. My concern is that they will have created problems of constitutional interpretation which will plague the country for years to come. Even the joint parliamentary committee, the federal one, said that the precise impact of the "distinct society" clause cannot be determined in advance and will be felt at the margins of government authority. Now, I do not know what the expression "the margins of government authority" means and I do not know how that is going to affect us. My concern is that leaving the accord loose is like leaving a loose cannon on a rolling ship. Note that everybody hopes it is going to end up in a safe harbour, but the chances are it will not, because we are not making sure of it.

This is not 1867 any more in other respects. The spending powers of the federal government are very important. In 1867 we were not paying taxes. I am sure there are many of us who would like that 1867 still to be here in that respect. But now the federal government takes taxes and distributes taxes and, in the process, makes policy. Until the accord, federal spending powers were in the political arena and money-sharing between the provinces and the federal government was a political issue. Now it is likely to get bogged down in judicial interpretation over the meaning of new terms like "national objectives" or "initiative." What before were requests from the provinces will become demands as of right. What will it mean to constitutionalize the spending powers provision?

Whether it weakens the federal government or strengthens it, as some say, it is clear that there is even a dispute about that. But what is sure is that the federal government's political leverage will be damaged. The problem is that when you constitutionalize things you leave the decisions then to judges rather than to legislators. We are not like the United States, in that our judges are not elected, they are appointed. According to the new Meech Lake accord system, they will be appointed to a much greater extent by the provinces than by the federal government, so you are changing the way in which decisions are made that will affect our country and you are undemocratizing it if you are leaving it to appointees to make decisions which are crucial.

My concern as well is by that by constitutionalizing the spending powers provisions together with the decentralization of our national decision-making process, we may have a weakening of our national ability to meet the challenges of environmental protection needs, telecommunications, science and technology, social assistance needs, those that need to be done by national will. The changes in spending powers, together with a threat to the charter, may affect old age pensioners' rights too. Who knows?

The point really is that we do not know. There are too many unanswered questions and those who signed the accord are turning too blind an eye to public concerns. The federal government gave us a debating society in its public hearings. I hope these hearings will be different and will be more than an opportunity to ventilate concerns.

I am concerned that Premier Peterson is widely quoted as saying that he will expect his caucus to back the accord. I am concerned because I think there are dangerous consequences in ignoring the accord's faults and simply going along with an agreement signed by a group of first ministers. I suggest as well that we will have vast new grievances in this country which will create much more disaffection than we have seen from Quebec: by women, disabled groups, the multicultural and aboriginal communities, the territories and others.

I believe the entire accord should be sent back to the conference table first, at which all interested parties should sit, and also to the drafting table to ensure that the language is effective to dictate the desired results. I encourage this committee to recommend that course of action. If the language is not effective to achieve the results that those who signed it want to achieve, then we absolutely do not know what is going to happen and what the interpretation is going to be in the courts.

It is my wish--and perhaps wishful thinking, but I hope not--that the Ontario government would allow a free vote, as a matter of conscience, when the ratification vote takes place in the Ontario Legislature. At a minimum, if everyone is determined to see this thing through, at least refer it to the Supreme Court of Canada in an effort to clarify the meaning before the difficult cases that have to be dealt with arise. If the Premier of Ontario invokes party discipline to ratify, I would encourage what I would regard as noble and patriotic dissent by MPPs in voting against party lines in the best democratic tradition.

The future of our nation as a nation is at risk and I feel it is the responsibility of every citizen to speak out. We must do more than vote at election time or our representatives may forget who gives them their power. We must stand on guard for our country when we see that our leaders and the opposition parties are not and we must speak for Canada when elected politicians do not.

In a democracy, we do not give our leaders carte blanche to change the most basic rules. If we let the first ministers amend the Constitution so drastically without our consent, will they then decide that elections need not take place every five years, but instead, every 10, 15 or 20? I know that sounds far-fetched, but the Constitution, in a very basic form, is being changed and we cannot simply rely on trust that our leaders will take care of us.

The future of Canada and its status as a true democracy was placed in the care of our elected representatives, federal and provincial. I feel that if the Meech Lake accord is ratified, we will know that sacred trust was misplaced. Thank you.

Mr. Chairman: Thank you very much. I think your comments at the beginning about the various hats we all wear--we are all private citizens and we are also many other things, and I do not think that takes away from the importance of doing what you have done, which is to sit down and prepare a very thoughtful presentation, one that clearly expresses as well a lot of feeling with it, so we thank you for that and also for the other hats you wear.

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Mr. Eves: I want to thank you for your presentation this morning. You have made a few points that agree with my thinking so I naturally think they are very good.

However, I do want to get to what your bottom line is. I gather you would prefer it if the Legislature and this committee had a free vote. I note that you say you have several concerns. One is the charter and whether or not the wording of the Meech Lake accord, or particular sections thereof, for example section 16, is going to overrule certain rights in the charter. I think, fairly put, that is ambiguous at best. We have had constitutional experts and legal experts appear before this committee and come down on both sides of that issue. I think the natural reaction to that is a Supreme Court reference. It has been suggested to us. Professor Baines, I believe, was the first one and other members of the committee have followed up on it.

I take it that is your bottom line. If the committee refuses to look at specific changes to specific sections in the accord and the various parties decide for whatever reason that they are not going to permit a free vote in the Legislature or in committee, the very least you would like to see is a reference to the Supreme Court. Is that true?

Ms. Silver Dranoff: Yes, I think that really would be the minimum. I suppose my underlying thinking behind that is that I would expect that if the Supreme Court of Canada, with nine judges, hears a reference as to what the Meech Lake accord means, you are going to get a five-four split on most questions. That is really going to show us what you are hearing in this committee, which is, if there is no agreement as to what it means, then the judges are not going to agree either and then where are we at?

Mr. Eves: I think Ontario has the ability to refer this to the Court of Appeal, a branch of the Supreme Court of Ontario, but I do not believe it has the authority to refer it per se to the Supreme Court of Canada.

Ms. Silver Dranoff: The Court of Appeal is fine too. The three judges will go two to one then.

Mr. Eves: At least that would be a step in the right direction, I gather, from your point of view.

Ms. Silver Dranoff: That is right.

Mr. Eves: However, I gather that your concern about the accord is much more basic than this, and that this is, as you say, your minimum. I gather that even if this committee were willing to entertain amendments and fix, for example, the problem with section 16 and say that all charter rights supersede or have precedence over the Meech Lake accord; even if it were able to address the concerns of people in the territories, be it the Yukon or the Northwest Territories; even if it were to introduce amendments to solve the problems of aboriginal peoples and not only recognize them but put in writing their right to appear before the next round of constitutional talks and give them precedence over such important matters as fishery rights and Senate reform, for example; even if it were able to address those specific amendments, I sense from your presentation you would still not be happy with that. You think we should scratch the whole thing and start anew with public hearings. Is that correct?

Ms. Silver Dranoff: Yes. I do not think this is the sort of document that can be tinkered with. I think that decentralizing the country is a really basic change in our national structure. For that we should have a national consensus and I do not feel we do have a national consensus.

I think we are decentralizing the country just by constitutionalizing the spending powers provisions. I think we are undemocratizing, if there is such a word, the country by constitutionalizing first ministers' conferences, which I think will take away from the power of all the legislatures in all the provinces and federally. I think it will end up that everybody with majority governments will simply ask all their people to vote along with them. Members of Parliament will be less thoughtful representatives of their people, as button-pressers at a vote, if there were such a thing as a voting machine.

I am really concerned. In other words, it is a vast and overwhelming change and I do not think you can tinker with parts of it satisfactorily. You can start with it as a very good first--I would not even say "very good"--draft and have that first draft available for discussion, but I do not think you can tinker with it.

Mr. Eves: You echo the words of our last witness yesterday. I think you are really telling us the same thing that Don Johnston, the federal member, told us yesterday, and that is to step back and look at the forest rather than the individual trees.

Ms. Silver Dranoff: That is right.

Mr. Cordiano: I just want to go back to the whole question of a reference to the courts. How would you conceive of that unfolding? How would you draft a reference to the courts on something like the Charter of Rights? Do you have any practical way in which that can be drawn up? I have heard that suggestion made in this committee numerous times, but I have yet to hear anybody say it can be drafted in such a format that would be practically possible for a court to look at.

Ms. Silver Dranoff: You would not have a specific fact situation you could use. I do not think it would necessarily be wise to bring out a hypothetical one. But it seems to me it would be reasonable to ask, as one

question on a reference, will the "distinct society" clause take precedence over the Charter of Rights? That is a simple question, a question that there is disagreement on. We are reassured, on the one hand, that it does not take precedence because it is an interpretative provision, and on the other hand, that in the mix, when judges sit down to interpret it, it still will have a bearing.

Now, if that simple question were put to the court, I think that is something it could answer. If they answered it, that would stand as a guideline in future cases. Either I and others like me would be reassured or we would not be reassured. Either it would affect the decision or it would not.

Mr. Cordiano: Has the Supreme Court ever answered a question that simply put?

Ms. Silver Dranoff: Yes, that is what references to the court are.

Mr. Breaugh: Yes, separate school funding; Bill 30.

Mr. Cordiano: No, that was a particular bill. There is a big difference. We can talk about this in camera when we deliberate--

Mr. Breaugh: Or we could even do it in public.

Mr. Cordiano: No, we can talk about it when we are deliberating on our report, but I can tell you there is going to be a particular issue with regard to this that is going to be quite difficult to resolve with respect to putting a question to the Supreme Court.

Ms. Silver Dranoff: That is what references are. References are questions--

Mr. Cordiano: The reference on Bill 30 was a bill. I am sorry but that is a different matter entirely. You had a specific bill that was put to the Supreme Court. That is very--

Mr. Chairman: ?? .

Mr. Cordiano: I just want to finish this, Mr. Chairman.

Mr. Chairman: OK, but I think we are trying to ask questions of the witness and--

Mr. Cordiano: It was in the line of questioning. I am sorry, but I wanted to pursue that line of questioning. Then Mr. Breaugh interrupted me, so I had to respond.

Mr. Chairman: On a supplementary, and I will permit just a brief concluding remark.

Mr. Cordiano: It is not my fault; it is his.

Mr. Chairman: All right.

Mr. Cordiano: Tua culpa.

Mr. Chairman: The chair will gently rap knuckles. Perhaps you could just conclude your questioning.

Mr. Cordiano: That is fine. I concluded it.

Mr. Chairman: OK. As it happens, the next questioner is Mr. Breaugh.

Mr. Breaugh: Now you have me thoroughly intimidated. I do not get all wound out with that. I believe it is quite possible to put a simple, straightforward reference to any court in the land to resolve what has to be resolved. Somebody has to provide us with a better answer about whether the Charter of Rights has just gone out the window or not, because it appears to me that it makes a hell of difference to a whole lot of folks and we had better have an answer to that one way or the other.

Let me take one aspect that runs through what you had to say because it is a concern I share. The notion of a Constitution and constitutional right in this country is relatively new. The interplay between the Supreme Court of Canada and governments in this nation is changing. I do not recall a situation where a Supreme Court decision ever had such a dramatic, immediate impact as the Morgentaler decision has had on Canadian politics. It is still not resolved. Decisions in the British Columbia Supreme Court yesterday indicate that the provincial government's response, which traditionally, previously would have been accepted as the province's right to do, was struck down. We are going to have to give some consideration to the relationship between the Constitution, the courts and the legislatures.

You mentioned on a couple of occasions here the fact that we do not elect judges in Canada. We do not even vet their appointments very much, though we are discussing that matter and have a proposal in front of us in Ontario. I have no problem with the parts of the accord which say the provinces will nominate people for the Supreme Court of Canada because I do not view that as being much different from doing out in the open what has traditionally been done in Canada. Somebody in the federal government called somebody in the Premier's office and, it used to be, said, "Do you have a well-qualified, totally impartial Tory lawyer who could be appointed to the Supreme Court?" They always seemed to find somebody. Now it is, "Do you have one of those who is a Liberal?" They will find some of those.

I do not mind that it is being done out in the open, but the distinction I want to make is that if the interchange between the courts and the legislatures is going to be different, and I suspect it is, then it becomes more critical, for example, that we have some indication, before they are appointed, what the views of these people are, because they are taking on a whole new role on the Canadian political scene.

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For example, you talked about the American experience in this matter. They consider it to be absolutely critical that before appointments are confirmed to the Supreme Court of the United States, there is an open vetting process of the nominees put forward by the President. They go before the Congress and some considerable time and effort is spent in determining where a person is coming from, what his background is, what her position is on this, all of that, so that before the confirmation process is concluded, the American people have had an opportunity to see where the person is coming from. As we have just seen, although they do not actually have a fix-it process, if that nominee is not accepted by the Congress, if the person is not going to be confirmed by the Congress, that person withdraws, so there is a bit of a vetoing process.

Do you think Canadian politics could really stand that kind of examination? For example, if we suggested that this is fine and the provinces can nominate people for the Supreme Court of Canada, but they must have a confirmation process that involves public hearings by the Parliament of Canada, I know several prominent jurists in the country who would go absolutely bonkers at the idea that they would have to doff their gowns and appear before a parliamentary committee and be confirmed in some way. That would really be a radical change in the way justice is handed out in this country. For example, we would have a problem here because we would probably be accused of interfering with the judicial process. In our parliamentary tradition, that is grounds for hitting the road. That is a real no-no. I would be interested in your comments on that.

Ms. Silver Dranoff: I wish I had the answer. I raised a problem and I do not know what the answer is. I am uncomfortable with election of judges. I was recently in the United States and, driving along, I saw posters, one after the other, "Elect Judge So-and-so, never been overturned by the Court of Appeals; 15 reported decisions; turnaround rate in judgements better than the other guy," and ads in the newspaper in the same way. My Canadian sense of propriety and dignity, I must say, was somewhat jarred by it. I would not feel comfortable with that.

On the other hand, what we have done is bring into Canada a hybrid system where we have an American constitution, but we do not have the accountability of our judges the way they do there. I do not know whether electing judges is the answer, but I think that when we, in the Meech Lake accord, constitutionalize things that were not constitutionalized, such as the spending powers provision, for one, we have to recognize that we are allowing unaccountable people to make the final decisions about what things mean.

This may be an issue that should be part of a conference table approach to the accord and other matters. We need to be thinking about how this Constitution is affecting our country. We need to think about how we want to choose our judges. I do not know whether the answer is a continuation of the present system, an election or some variety of it, but it is something that we should be paying attention to and discussing. That is part of what this whole Meech Lake process has brought to the fore that I think we cannot ignore.

Mr. Breaugh: I will just conclude on this. One of the things that bothers me a bit is that on the surface there is not a big change here. A public process, a known way of going about this, would be fine. The difficulty that occurs to me is, what if Quebec nominates someone to the Supreme Court of Canada and the federal government says no? There is no process established here for validating why that person is not an appropriate appointee to the Supreme Court. That is blackballing in my book.

If the federal government retains the power to actually make the appointment and Ontario now assumes the responsibility for making the nomination, if Ontario puts forward a very eminent jurist and the federal government can say no but does not have to explain why that person is not worthy of serving on the Supreme Court of Canada, we could ruin careers here in the absence of any public reason being given. I mean, is it because this eminent jurist is a crook? Is it because he is a jerk? Is it because they do not like his political views? There is no accountability for that.

That is the problem I see in the process as outlined here. If we are going to do the one thing, then we have to do some corresponding things that provide for some accountability somewhere. It does not mean that we have to elect judges, but it does mean that--

Ms. Silver Dranoff: We have to know who they are.

Mr. Breaugh: Exactly.

Ms. Silver Dranoff: I do agree with you on that. I did not deal with that point in your question. I do agree that we need to know who these people are, and what their views are and what their integrity level is.

Mr. Chairman: A month ago or a couple of weeks ago, the Attorney General (Mr. Scott) made some suggestions in terms of provincial judges about trying to get more input. I guess it was centred more on receiving suggestions and recommendations from a much broader range of people, although it seemed to me there was, within that idea, something that would take one beyond, perhaps not to a legislative committee, but to where we would have more information, apart from Meech Lake, about the whole process of appointing judges.

I guess you are really speaking to that point. How do we get to know more about the people who will be sitting in judgement on whatever it is right through the whole piece, whether as a provincial judge or on the Supreme Court. Have you seen that speech?

Ms. Silver Dranoff: Yes, I did. I heard about that. I have not come to any conclusions myself on what the best way is of choosing judges except that I would appreciate greater accountability, a greater sense of democracy.

I know we are getting off topic but you are asking me about it and it is something within my experience. I would like to see some kind of a management system within the judiciary so that there is a training system and so that there are bosses, so that the judges have bosses like everybody else.

Mr. Chairman: Like the Blue Jays. There will be spring training.

Ms. Silver Dranoff: That is right.

Miss Roberts: I might make one or two comments from what you have already said. The charter is something new and we, as Canadians, are just learning to live with it, and some of the decisions that have come down are startling to us, very startling. I think we have to change many ideas and thoughts because of the charter. As to your comments with respect to judges being unaccountable people who are making decisions, we must always remember that all legislatures can go back and change the laws. Even the Constitution itself can be changed, and the charter itself can be changed. That is what we are attempting to do right now through the Meech Lake accord.

From your comments, I would assume that you do not like anything in the Meech Lake accord; there is not one thing there that is what you would consider appropriate to be done. You suggested taking it back to the conference table and retalking it. Let us consider that process. If we do turn it down, how are we going to deal with the changes that have been suggested? What is the process going to be, that you would suggest, other than taking it back to the conference table? What happens after it goes back there? There are going to have to be some changes sooner or later.

Ms. Silver Dranoff: I am not prepared to outline a process today except to say that, within the process, certain things would have to be done. I would think that members of parliament of all parties in every province across the country and in the federal Parliament should be involved in the process, just as all representatives of special interest groups across the country should be involved in the process.

Now, whether you have a consultation-type conference or whether you have a royal commission that convenes in every province, really, the point is that everybody who is involved, which is everybody in the country, has to have input and it is not something that can be done quickly. I think it has been done too quickly.

What I am really saying, then, is it is not something for first ministers to decide and then bring their parties along with them. It is for the elected representatives in this country on a very broad scale to discuss.

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Miss Roberts: The most important thing, if I might say just very briefly, is the process. We have to give them some advice with respect to how to do this. This charter is new, the constitutional changes are new, and we are looking for some input as to how to help the process because the next time around, even if Meech Lake does not pass, they may do the same thing. This exercise should at least have us in the process. If you have any ideas in the future or even now, I think we, as a committee, would appreciate hearing those ideas as to how we can change this process.

Ms. Silver Dranoff: I understand. What you are saying is, in the final analysis, somebody has to make the decision, and who is that somebody going to be.

Miss Roberts: That is right.

Ms. Silver Dranoff: The question is, is it going to be the legislatures, using or invoking party discipline? Is it going to be the legislatures of the provinces on a free vote? Is it going to be a plebiscite or a referendum?

The most democratic means is, of course, either a plebiscite or a referendum. I am not sure that the issue is not so complex that that would necessarily be a workable means, but I think that, for changes this basic, you have got to have as democratic and as broad a decision-making process as possible.

I would prefer to see some kind of a constitutional conference convened which had representatives of all political parties from all provinces, and elected members of parliament from all provinces, and free votes in the legislatures. Then at least whatever decision is made, even if it is a decision I do not agree with, I will feel it has been made democratically and I will be able to live with it.

Miss Roberts: Thank you. That is helpful.

Mr. Allen: Thank you very much. I appreciate your coming and providing us with your reflections on the Meech Lake accord, Ms. Dranoff. You have obviously spent some time working over the issue, in company with others, and it is helpful to have reflective and considered opinions before us.

I guess I have some problems with both your article and your paper in some respects and I would just like to ask you a few questions. First of all, let me preface this by saying that in many political issues there comes a kind of qualitative turning point where, suddenly, it becomes the thing to oppose, and then the language begins to escalate and becomes perhaps a little bit extravagant. It then becomes increasingly difficult to consider the matter in terms of rational evaluations, clear meaning of terms and what have you.

I must confess, I find a little bit of that in your article when you, for example, in the middle of it, suggest: "Handing every province the power to veto future changes in political institutions and to appoint judges and senators may lead to deadlocks. The accord effectively creates a new and different Constitution." If it did, indeed, do precisely what that language says, it would be a very different Constitution.

But, of course, it is only some aspects of political institutions that are proposed to be touched by unanimity as distinct from the other amending formula. The power to appoint judges and senators is not going to be given to the provinces. It is clear in the accord that that is a shared proposition of nomination, on the one hand, and appointment on the other.

I just wonder, if our concern is to get the premiers back to the table to discuss this thing and to get perhaps a few of the important changes that are necessary--and which I think are necessary--into the accord, is it not making it more difficult, and not more easy, for them to go back to the table if one insists on simply taking the accord and extrapolating from it rather extravagant conclusions, which you seem to do in that paragraph?

It may serve the purposes of attack to sow confusion and to portray as apocalyptic what is rather less than apocalyptic, but does that not make it more difficult for our first ministers to go back to the accord and to say, "Perhaps we can consider the problem of the Northwest Territories and the Yukon, or perhaps we can consider inserting a statement with respect to the primacy of the charter over the Meech Lake accord"? To do a couple of those things could very well resolve an awful lot of the problems that a lot of the people are having around it.

Is it fair to them and to the process even, and to ourselves, to write as though things were happening which were much more extensive than in fact are proposed by the accord?

Ms. Silver Dranoff: I stand by what I wrote. What I wrote envisions the impact of the accord, if not today and tomorrow, next year and in 10 years from now. While it may seem inappropriate in language to you because it is not happening at the moment, I would say that the impact of the accord changes will make that happen in the future.

Mr. Allen: But there is no way you can demonstrate that that will follow, because there are other lines that development can take, that can happen in a dialectical situation such as our federation is, surely.

Ms. Silver Dranoff: There is no way that those who are for the accord can demonstrate that the opposite will happen. That is the problem. It is not clear to me what will happen as a result of it.

You say that language like that may prevent the first ministers from rethinking aspects of the accord. I do not think my language in that article is going to affect the first ministers' decisions to change or not change the accord. It has been my observation that nothing anyone has said has budged any one of them one iota. They are all standing very firm, and I think that is the unfortunate part of the process.

It is all very well and good for them to come up with the best possible accord that they think would work, but then they have to justify it, they have to do feasibility studies, they have to show that somebody has given some thought to how this is all going to work out in practice. It is not my impression that is what has happened.

Mr. Allen: Something is happening in the press, if not in reality, and I am not sure what that is. A few days may tell us.

The second concern that I have comes back to a couple of your comments. You ask on page 6, "How can anyone accept the simplistic statements of pro-accorders that it's only to get Quebec into the Constitution?"

Of course, I think it is obvious to all of us that there are some changes that are proposed and some adjustments that are described that accompany that. You amplified that a little bit earlier on page 3, where you deal with the five terms that Quebec proposed and then go on to your further paragraph.

I guess the dilemma I personally find myself in is that persons like yourself making these particular points seem, on the one hand, to be rejecting all the language of special status. "We don't want Quebec to have a role or powers that are different from other provinces in the country." Yet, at the same time, we are in a political situation, a constitutional situation in the nation where it is necessary to respond to a province that is different, with a different predominant language, with significant cultural differences, and somehow we have to allow for some protection, some special measures that will enable that particular culture and language to survive in the context of the North American continent, etc.

If you back away from enshrining anything in the Constitution that responds to all that, then you are in a situation where you are going to have to say, if you respond and preserve equality of provincial powers and so on, you are into a situation where the other provinces have to be cut in on the deals, which is what Meech Lake did.

I submit that you cannot have it both ways. You cannot constantly be hammering against special status, or something like it, and backing away from that, and then when something happens move in the direction of another solution without somehow incorporating other provincial equality propositions.

How do you square that circle? I have not heard anyone coming forward critical of the deal from the perspective of rejecting special status who has any other solution in terms of the overall strategies that Meech Lake seems to embody. How do you square that circle personally?

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Ms. Silver Dranoff: I think that before Meech Lake, Quebec had special status. Without constitutionalizing the words "distinct society," they have historically had, and in the existing Constitution have, a special status. But by putting in the words and giving them this greater role, by constitutionalizing immigration--immigration used to be, just like spending powers, a political bargaining process between the provinces and the federal government. Now immigration is being constitutionalized.

All the five points that Quebec wanted, and that now the rest have as well, put it within the Constitution in a different kind of way. I am not against continuing Quebec's special status in Canadian society. It is not only a historical fact; it is also a constitutional fact. But changing it, as the Meech Lake accord did, and giving the same thing to the other provinces, is a problem.

Mr. Allen: To take the question of immigration, no new powers over immigration are given to any province. Immigration was a shared jurisdiction in the 1867 agreement. Nothing fundamentally has changed. All that is said in Meech Lake essentially is that just as Quebec has taken advantage of the 1867 Constitution in order to work out some arrangements with Ottawa whereby they agree as to how immigration will happen and under what terms with respect to that province, so now Meech Lake simply says that other provinces may be permitted to enter into similar kinds of agreements. So what essentially has changed? What have we constitutionalized that was not constitutionalized before?

Ms. Silver Dranoff: The immigration agreement that Quebec would get a certain percentage of immigrants who come to Canada is now a constitutional right of Quebec's. It was not a constitutional right before. When you talk about the impact of the "distinct society" clause on the immigration provision and the Charter of Rights and you look at how this is all going to impact, one of my favourite examples of practical impact is: what happens if Quebec says, "We have a constitutional right to 25 per cent of the new immigrants to Canada," and those new immigrants want to move from Quebec to another province?

They say: "We have a right to move. We have mobility rights in the charter." What takes precedence then, the charter's mobility rights or the rights of Quebec to promote its position as a distinct society by having immigration at a certain level within Quebec? There would be an interesting practical example of whether the charter is going to take precedence or not.

Mr. Allen: That question was asked, raised and answered in the Langevin discussions. They allowed the mobility rights to take precedence, as written into the Meech Lake accord.

Ms. Silver Dranoff: I hear you say that. I am not familiar with the part of the accord you say does protect that because it is my understanding it does not. But there you are, that is what we have on the whole Meech Lake issue: strong differences of opinion about what it means.

Mr. Allen: But it is not a difference of opinion. Go home and read the immigration section. It and the mobility rights were significantly changed at the Langevin discussions. We have been through that bundle in the committee, and the mobility rights were written in precisely because that was a legitimate concern over the Meech Lake first draft. You are quite right about that, but it was written in.

I am just saying that to refer to the immigration aspect of the agreement as somewhat constitutionalizing something that was not there before does not alarm me particularly, if it is only an extension of the powers that were already there and if nothing dramatically unfair happens in the process. As long as there are mobility rights, I do not see a problem in Quebec having its share of national immigration affirmed as a right in the charter. It is reasonable. Any other province can ask for the same. It does not tread on anybody else's toes, basically.

I understand your concern about overconstitutionalizing. One can write too much into a constitution, quite clearly, and I have some sympathy with that perspective you are trying to draw before us. I was really just trying to get you to work over the squaring of that circle. If not special status that is fairly clear and reasonably explicit and if not a rearrangement of provincial attributes, if you like, and participation in the federation which would consort with anything new that was given to Quebec, then where do we go?

You cannot close off both doors and still want to go somewhere in this federation. That is my concern.

Ms. Silver Dranoff: I am not against the recognition of Quebec as a distinct society if it were a term that did not have difficulties attached to it. In the way it is done in the accord, I have difficulties with extending the equality powers to the other provinces. I do not think I have anything further that I can usefully add to your comments.

Mr. Allen: My concern is that it is very difficult to find language that is totally and entirely unobjectionable in these matters, as we are finding out.

Mr. Chairman: Mr. Offer, if I might just note the time, we still have two other presentations this morning.

Mr. Offer: You are too kind.

Mr. Chairman: I know you are always brief, to the point and full of pith and substance.

Mr. Offer: To the pith and substance.

Mr. Chairman: Just while we are on the business of interpreting words and expressions.

Mr. Offer: You are taking up all the time.

If I might, I would like to talk about the whole question of this court reference that you brought up earlier. It would seem that one of the major reasons would be to add a particular certainty or clarity to the meaning of one matter over another. In your submission you have talked about taking this type of reference, and I know that we have dealt with it with respect to some earlier questions. Keeping in mind what these particular provisions of the agreement are--and I know that you alluded to their being interpretive provisions, but still there is no understanding with respect to how they would be used in dealing with the rights sections in the charter--you then talk about the charter giving rights absolutely.

We know there is also section 1 of the charter, which talks about these absolute rights not being absolute in certain terms and circumstances dealing with the whole question of discretion of courts and dealing with the whole question of the particular fact situation. My question to you shortly is, because we have all of these different, very important elements that have to be taken into consideration, in all practicality, what type of certainty could be achieved in terms of taking a court reference? What would be the certainty?

I see that there would not be the certainty emanating from a court reference that others might result in, because of the fact of these different elements that will always be taken into consideration by courts. Rather, it is an evolution of court decisions. It is an evolutionary matter. It is discretionary, depending upon the particular fact situation, depending on the particular point in time. The Charter of Rights contains particular terms which will, over time, be determined by judicial interpretation that might change over time. If that is the reason for the court reference, are we not in some ways asking for something which is not really possible?

Ms. Silver Dranoff: You refer to section 1. Section 1 would really only have impact on a specific situation where a court would have to decide whether or not it would be reasonable to do something in a free and democratic society in that particular case.

Mr. Offer: Right.

Ms. Silver Dranoff: But a reference talks instead to rather larger issues; for instance, the one question which I raised, does the charter take precedence over the "distinct society" clause or does it not?

The problem is when they added the multicultural saving clause by saying that nothing in the accord affects the multicultural rights, for example, they therefore raised the implication that everything in the accord can affect everything else in the charter. That is simply a basic rule of statutory interpretation that has been raised by their tinkering and adding section 16 as they did.

I think a reference could be very useful. It could be very useful either to provide certainty or, as I guess I consider more likely, to shed light on just how difficult the drafting may be and perhaps leading the legislators in the direction of improvements.

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Mr. Offer: The problem I am really grappling with is with respect to this whole court reference issue, that the reason for any particular court reference would just not meet its initial reason--

Ms. Silver Dranoff: But they could say the charter takes precedence or it does not.

Mr. Offer: --because the courts will always take into account other sections of the charter, certainly, other points in the Constitution as a whole in dealing with the particular fact situation.

Ms. Silver Dranoff: Yes, but I think they can say, as a matter of interpretation, the charter takes precedence over the "distinct society" clause or it does not, for one example. They may have difficulty in defining what "national objectives" means in the "spending powers" clause without a particular fact situation, but it would be a matter of framing the question for them. Some aspects of the accord would require a specific fact situation, but many would not.

Mr. Chairman: Thank you very much for coming this morning. As the committee has proceeded along and as we have started to grapple with some different approaches and avenues, it has been very useful to have this kind of exchange to try to focus on what some of those roots are. We want to thank you for the time and effort you have put into your presentation, for the other article which you brought along as well. We very much appreciated the interchange this morning.

Ms. Silver Dranoff: Thank you for a fair hearing.

Mr. Chairman: I would like now to call upon the representatives of the Ontario Metis and Aboriginal Association, Charles Recollet, the president, and Chris Reid, who is the constitutional legal counsel for the association. Welcome, gentlemen. We thank you for coming this morning. You have provided us

all with a copy of your submission. If you would like to make your presentation, we will follow that up with questions.

ONTARIO METIS AND ABORIGINAL ASSOCIATION

Mr. Recollet: As the chairman has mentioned, to my right we have with us Chris Reid, our Metis constitutional lawyer, on behalf of the organization.

The Ontario Metis and Aboriginal Association, formerly the Ontario Metis and Non-Status Indian Association, represents Ontario's over 200,000 aboriginal peoples living off-reserve in Ontario in urban, rural and remote areas. Our members live in communities all across Ontario.

It is said that a country's constitution should represent a vision of what that country is and should be. If we accept this principle--and we at OMAA do fully agree with it and accept it--we must ask ourselves, "Does the Langevin accord accurately reflect what Canada is and should be?"

The aboriginal peoples of Ontario answer that it most certainly does not. The accord promotes a view of Canada which ignores the first founding people of Canada and Ontario--the aboriginal peoples. It provides a vision of the future in which aboriginal peoples cannot hope to share. The accord completely ignores aboriginal peoples and their place in the existing constitutional order and totally misstates Canada as it is. It takes us back to a myth of 120 years ago that the fundamental character of Canada is of the French and the English.

The accord proposes far-reaching changes to each and every constitutional document that exists in Canada. Some of these changes are good in so far as they recognize and give effect to Quebec's uniqueness. Others, some due to careless drafting and some deliberate, will lead to disastrous results for the aboriginal peoples. The accord sets the stage for a massive and ever-greater expansion of provincial powers, leaving aboriginal peoples without any realistic chance of being included in the constitutional order. It ransoms our long-term future for the short-term gains of some first ministers.

The Constitutional Act, 1982, contained a provision for eventually making aboriginal peoples partners in Confederation. The 1982 act recognized certain realities about Canada and the need to provide some countervail to allow our peoples, otherwise weak and without influence, to negotiate our place in Confederation. The 1982 act contained these provisions. The 1987 accord abandoned them.

Great care and extensive political and public debate went into the delicate balance of the 1982 Constitution Act. No change or alteration to that arrangement should be considered in haste. Many premiers have spoken again and again of the resistance to the idea of amending the Constitution in haste on aboriginal rights. We find it more than ironic, therefore, that 11 first ministers, over two sessions of heated and isolated bargaining, were able unanimously to agree to a new and extensively revised arrangement for the governance of Canada.

In 1982, it was thought that four main elements were required in altering Canada's Constitution. In referring to them, I am following the precedence in the act itself.

Part I sets out the Charter of Rights and Freedoms. This promised to set the benchmark for future government-citizen relations in Canada.

Parts II and IV established specific provisions to promote the inclusion of aboriginal peoples in Confederation. This package, which was seen then as a first round of reform, included section 25 of the charter. Part II itself was the basis, the foundation, for an aboriginal charter of rights and part IV. Part IV provided a unique mechanism for constitutional reform in this area, the precedent of constitutional conferences between first ministers and the aboriginal leadership. In part III, the principle of equalization was enshrined.

Finally, in part V, a new and detailed amending formula was set out to provide for both stability and flexibility. Stability was crucial in areas that were not to be left open to occasional or too-easy amendment. Flexibility was very important, given the recognized need for further reform.

It is the changes to the aboriginal package and to the amending formula that I am most concerned with. Neither of these issues was mentioned in Quebec's five-point demands. I wish to stress again that I have no major quarrel with Quebec's demands or with those parts of the accord which address them. Neither of these issues was raised by Quebec, but they are in the accord, nevertheless, for whose benefit I do not know.

First, the amending formula: In 1982 the amending formula contained six major procedures to address nine types of issues. For this reason, I call it the six-and-nine formula.

First, there was what I call the sacred list of national institutions. These include the sovereign parliamentary structure of government, the composition of the Supreme Court, the amending formula itself and minimum linguistic and provincial representation guarantees.

For these matters, on which there was such a basic and lasting agreement that no further changes could be lightly forecast or invited, unanimity was the formula adopted. This was appropriate since unanimity was seen as the equivalent of saying: "On these matters we are agreed. We have reached as close to perfection as possible, and to even hint at future tinkering can only damage the delicate fabric of the nation's existence."

The second procedure was the general amending formula, which was developed with four special types of issues in mind.

The third, fourth and fifth procedures are relatively uncontentious. They involve, respectively, sections 43 to 45, inclusive.

It is to the last, the sixth procedure, that I would like to draw your attention. This was the aboriginal amendment formula. As I said earlier, this was set out in part II and part IV of sections 35 and 37 respectively. I stress that the 1982 act contained this formula as a separate and unique one. It was to involve the first ministers' conferences with aboriginal leaders that were legally required to identify and define aboriginal and treaty rights. No other part of the amending formula mentions the need for first ministers' conferences. Indeed, the only other mention of first ministers is in section 49, requiring a conference within 15 years to review the amending formula as a whole. Have the Meech Lake accord and the Langevin meetings now spent section 49? The amending formula has been reviewed, and with a vengeance.

The 1987 accord proposes to replace the six-and-nine formula with a five-and-seven formula. That is really the essence of the change to the amending formula. The 1982 act saw nine sets of issues as important and set

out six procedures to address them. The 1987 accord reorganizes the picture of what is important in Canada by reducing the list to seven and limiting the ways to address them to five. The first way it does this is by affirming entirely the termination of the unique aboriginal amendment formula.

The second way is to lift all of the items that were specifically identified in 1982 as in need of reform--all of these items listed in section 42--out of the general amending procedure and shift them over to the unanimity rule.

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It is this move that has, quite rightly, come under so much fire. Why? Because it means that the worst inclinations of future politicians will be pandered to. If Senate reform or making the Yukon a province is on the agenda, it will invite every single province to ransom the proposed changes for whatever the province may want from the federal government. Every other province will demand equal treatment. This will mean that every effort to amend the Constitution on one issue will result in a repetition of Meech Lake--an unending spiral of tradeoffs, payoffs and buyoffs.

Instead of the unanimity rule being a cautious and minimal one aimed at safeguarding the essence of what Canada is, it will be transformed into the major amendment rule, ousting the more flexible and realistic section 38 procedure.

The unique aboriginal amendment procedure has now been terminated and the draft before you seals its fate. Some people maintain that this is not the case. They say section 38, the general formula, exists in case we ever come to make amendments on aboriginal rights.

This attitude is mistaken. This forgets that the section 37 provision for first ministers' conferences had a purpose and a reason that remain unchanged. Aboriginal peoples require the protection and sanction of the Constitution when we deal with the first ministers. As they showed in 1981 and at Meech Lake, they cannot be trusted to deal fairly with our interests when we are not represented or present and when the public is not provided a clear view of the proceedings.

Second, this attitude ignores the fact that section 38 is not the amending formula for aboriginal issues. Part II and part IV provide for a unique formula that allow us to use section 38 or sections 41 to 45, inclusive; that is, an amendment on aboriginal rights could have used the unanimity rule, the general procedure or even the section 44 procedure that requires only Parliament's resolution. It will all depend on the subject matter. In all cases, however, the procedure would require a first ministers' conference to be held with the aboriginal leadership. That is what was unique about the aboriginal amending formula, and that is what the Langevin accord ignores and terminates.

Several months ago, after the failure of the aboriginal FMC in March 1987 and around the time of the Meech Lake meeting, the aboriginal summit leadership took a long, hard look at the process of constitutional reform in Canada as it affects the aboriginal peoples. They drew three conclusions.

First, the framework for constitutional development established in 1982 was seriously in peril. This was because the amending formula established in 1982 had contained a unique instrument for completing the circle of

Confederation, the section 37 process. On April 18, 1987, section 37 disappeared.

The second conclusion was that the first ministers had decided to move on to their own priority agenda for changing the Constitution of the country, a list of initiatives that is long and only half-drawn, but one that has been in abeyance since 1982 because in many cases the changes involved require Quebec's assent and Quebec had refused to participate in any constitutional amendment process for the last five years.

The third conclusion we drew was one shared by many observers of the aboriginal process over the last half decade. We saw that a new and invigorated framework was required to drive us all towards a lasting agreement on how aboriginal peoples are to be included in Canadian Confederation.

The meetings from 1982 to 1987 were based on the understanding that aboriginal rights were the number one, the first round of reform. The process set in train in 1982 also assumed that a few years of concentrated effort would be sufficient and that a permanent provision for aboriginal constitutional reform was not required. Clearly, we were wrong on both counts.

So what is it that we need? I want you to pay close attention to section 35.1 in the 1982 act. The draft resolution affects it in at least three ways. First, the change to the amending formula moving Senate powers under the unanimity rule means any self-government amendment in the future which tries to address subsection 91.24 will require unanimous consent. In addition, this change means subsection 91.24 is affected by the resolution, a fact that calls into effect the section 35.1 conference requirement.

The careless and open-ended drafting of this resolution will require that a special constitutional conference with aboriginal peoples will have to be held before the resolution can be given royal assent.

There has been much talk about first and second rounds of constitutional reform. From the recent speeches of the first ministers, it is clear that they consider the first round as having been substantially completed with the drafting of the Langevin accord. The second round, as elaborated in section 13 of the accord, speaks to Senate reform, fisheries and other agreed-upon matters. What happened to the aboriginal agenda?

Before the next steps toward reform are undertaken I would have hoped that the first ministers would have agreed that, with Quebec's inclusion secured, the first priority would be to complete the circle of Confederation by providing for an amendment recognizing the right of aboriginal self-government. The first round will not have been completed until that task is met. It is difficult, for instance, to envision any appropriate discussion of Senate reform or fisheries that does not require prior or parallel deliberations on these issues, on the issues of aboriginal representation in the former and the implications for aboriginal and treaty fishing rights of the latter.

We will no longer accept being bit players in the centuries-long drama of the French and English only in Canada. We refuse to pay yet again for the failures and compromises of others. In 1982 a distinct provision, written across three different sections, was added to the Constitution to allow aboriginal peoples to find their place in Confederation. It is now proposed to gut that provision and forestall forever the completion of the circle of Confederation. Is it only ironic that this should happen under the banner of

completing Confederation by satisfying Quebec's demands and paying the high price of concurrence exacted by the other premiers or is it deliberate?

We are told that the Langevin accord was solely concerned with Quebec, and that aboriginal matters were not addressed positively or negatively. This is simply not true. The place of aboriginal peoples in Confederation was discussed. Premier Hatfield raised it. Premier Pawley raised it. In the end, we were asked to accept a fake status quo. Section 16 does not maintain that status quo. It attempts to cover up what the accord really does, which is to oust aboriginal peoples from the status we achieved in 1982 and permanently close the door on any realistic hope for completing the circle of Confederation. Aboriginal matters were most certainly raised and discussed on April 30 and on June 2, just as they were discussed in November 1981 when the premiers demanded that aboriginal rights be thrown out of the patriation package.

The only difference is that in 1982 we had allies in Parliament and in the provincial legislatures who demanded that our rights be reinstated. What of 1987?

I would like to point out that I have read the text of the presentation by the chiefs of Ontario to this committee and I am in agreement with their comments. I have, in turn, shared the text of this speech with the chiefs and I have been advised that they share the Ontario Metis and Aboriginal Association's concerns. It can fairly be said, therefore, that the accord as it now is, has been rejected by representatives of all of Ontario's aboriginal peoples.

In summary, the aboriginal peoples have identified three fundamental areas of concern with the Langevin accord:

1. Nonrepresentation in the process by which the amendments that directly affect us were developed and decided upon;
2. Termination of the only process of constitutional reform for aboriginal peoples, in the absence of which aboriginal peoples have no forum in which to pursue amendments on self-government and related matters or to address the direct and indirect impact of future second-round constitutional reforms on our rights and status;
3. Abrogation of the fundamental rights of northerners, more than half of whom are aboriginal, particularly with regard to the establishment of provinces in the north and representation of northerners in the Supreme Court.

I have stressed the first two, but I cannot speak of OMAA's concern with the accord without mentioning our solidarity with our northern brothers and sisters.

The following constitutional action is required to meet our fundamental concerns, whether by amending the accord or initiating separate companion amendments for prior or simultaneous promulgation:

1. Reinstatement of a constitutional requirement for ongoing constitutional conferences on aboriginal matters, an initiative that would legally require the holding of a first ministers' conference at which aboriginal and territorial leaders must be present as full participants;
2. Guarantee of aboriginal participation in the so-called second round

of constitutional reform where our rights or status are affected;

3. Clarification of the accord to ensure equitable representation of the north in the Supreme Court, and

4. Provision for equitable treatment for northern Canadians by at least maintaining the current section 38 rule for the establishment of provinces in the territories or preferably, by restoring the pre-1982 bilateral procedure by which all other provinces have entered Confederation.

It is clear that all of these issues will be more difficult to address after the accord is promulgated. Aboriginal peoples cannot simply wait until after the accord is law. The political basis and opportunity for addressing these issues hinges on the desire of governments to pass the accord into law without significant opposition. There are no obvious tradeoffs or inducements after passage of the accord, especially since aboriginal peoples and northerners lack the resources or political weight needed to generate such inducements. These issues will also have to compete for attention with other matters, including Senate reform, fisheries, and annual meetings on the economy.

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We have found over the last century that it is not only when a clearly structured and legally mandated process for reform is in place that the conditions conducive to reform can be generated. Without such a process, aboriginal peoples and their rights are quickly forgotten and overwhelmed by other developments over which we have no influence.

In concluding my remarks, I wish to suggest that there are three options that you can consider.

First, you can amend the accord as we have asked in our submission. As far as the so-called "second round" of constitutional reform is concerned, we can provide you with the wording for an amendment to section 50 that was drafted by one of the governments involved at Meech Lake but not pursued.

As a partial compromise, in the face of political difficulties of getting the 11 legislatures to agree to the same amendments, you may wish to endorse companion resolutions to the Langevin accord that specifically address aboriginal peoples. The purpose of one such resolution would be to reinstate the section 37.1 procedure. A draft companion is attached to my submission as annex 1.

Companion resolutions are simply resolutions amending the Constitution that are initiated for adoption before or at the same time as the Langevin accord receives attention. The procedure is as follows:

1. Agreement to a text for each of the amendments;
2. Drafting appropriate resolution language;
3. Tabling of the resolutions in the Senate or in a provincial legislature;
4. Holding the appropriate votes that, if supported, would formally initiate the procedure for amending the Constitution.

Ideally, provinces should give formal consideration to the companion resolutions before the House of Commons is asked to vote on them. The latter point is made in the context of statements by federal government spokespersons that it was one or more provinces, and not the federal government, that demanded the wording of the Langevin accord which now gives rise to the issues addressed by the companion resolution option. The House of Commons would therefore probably await provincial consideration before assenting or dissenting to any of the resolutions.

In annex 1, it is proposed that the process of constitutional reform that was legally a part of the Constitution between 1982 and 1987 be reinstated as an ongoing undertaking. It would be essential to add the aboriginal conference requirement to Part II of the Constitution Act, 1982 since this would keep all of the related clauses in the same part and give added protection to the amendment. The amendment would involve the general procedure for constitutional amendments, requiring the support of two thirds of the provinces.

Importantly, this route would invoke section 35.1 of the Constitution Act, 1982 and a formal conference of first ministers with aboriginal representatives would be called for. In effect, the Senate or any provincial legislature, simply by initiating an amendment resolution on this subject, would trigger the need for a first ministers' conference at which aboriginal, as well as territorial representatives, would be full participants. Section 35.1 binds all first ministers to meet with aboriginal leaders before any amendment is made to Part 11.

The conference that would be triggered would not have to be a lengthy affair. With basic support for this companion amendment, elaborate preparatory conferences at the ministerial and officials' levels would not be required. Legally, however, section 35.1 would be invoked and aboriginal peoples would demand that the legal commitment of the first ministers be upheld. The conference would, at the very least, be an opportunity to explain to Canadians the need for the amendment and afford an opportunity to ensure complementary action by all legislatures.

By initiating such companion resolutions, the Ontario government can address one of the fundamental concerns of aboriginal peoples while, at the same time, avoiding any legal change to the Langevin accord and, thereby, avoid any threat that the accord would unravel any process of revision. The companion resolution option does involve amending the Constitution but does not involve changing so much as a comma to the constitutional amendment, 1987 now before this committee.

As regards such matters as Senate powers, however, the accord itself must be amended to prevent section 9 of the accord from affecting subsection 92.24 and bringing section 35.1 into effect.

Finally, we could choose to do nothing. Some of you could issue a minority report, I suppose, but that will still be a minority report. Aboriginal peoples would have to draw their conclusions about this Legislature from what the majority decides. In that case, I am afraid the so-called special relationship of the crown to aboriginal peoples would be at an end once and for all. We would then know where we stand.

As I pointed out, if you do choose inaction, then you will be paving the way for a contest between aboriginal peoples and the legislatures and Parliament. The basic issue will be section 35.1. Now we have proposed a

solution and we are willing to work with you on it, but it is your commitment and you bear its burden.

OMAA does support the Quebec people in their efforts to have the Constitution amended to recognize their distinctiveness. OMAA supports the five-point demands of Quebec and those parts of the Meech Lake Accord that reflect them, but OMAA does not support the Langevin deal as it was drafted.

I sincerely hope that you will deal fairly and justly with our concerns. Thank you.

Mr. Chairman: Thank you very much. You have not only set out the problems but also, in a very interesting way, suggested one avenue to get out of it. At this stage, we certainly are aware of a number of problems. We appreciate that you and your colleagues have obviously sat down and given a very great deal of thought to how to resolve that problem. I think it raised some very interesting ideas.

Mr. Eves: Mr. Recollet, it is good to see you again. Mr. Reid.

I think you have made a very ingenious presentation to this committee. Most groups that have appeared before us have not really come up with any new process we could look at which would perhaps do away with the necessity of amending specific sections of the accord. I think you are to be complimented for taking that initiative and coming up with a novel suggestion which, I am sure, this committee will look at. We look forward to your supplying us with the draft wording for an amendment to section 50. We would appreciate receiving that.

I think your comment on page 13, where you say, "There are no obvious tradeoffs or inducements after passage of the accord, especially since aboriginal peoples and northerners lack the resources or political weight needed to generate such inducements," also shows that you are quite politically astute. I think you have hit the nail on the head there quite accurately.

I want to talk about this idea of the companion amendment. I think one of the concerns that many, if not all, members of the committee may have is that we are operating under a time line, which may seem to be great to some but perhaps not great to others, so when you start talking about drafting an agreement on such an amendment, how do you see this procedure, the process taking place, and do you think that all 10 legislatures and the House of Commons would have time to go through this process you are suggesting with respect to your companion amendment?

Mr. Recollet: As I have mentioned, it is a suggestion. I further mentioned in my report that when Meech Lake and the Langevin accord were drafted, there was no aboriginal participation in the drafting of the Meech Lake accord. The only political route our national organizations had access to was the Canadian Constitution, the highest law of the land. When we sat down with the provinces, territories and the Prime Minister of Canada, we were hoping to have an amendment to entrench the right of self-government in the Canadian Constitution within the context of the Canadian federation.

Apparently, that did not take place, as everybody has seen over the past five years. I was mentioning in my presentation that I think they used the whole process to stimulate issues such as free trade and the Meech Lake accord. The forum, which is designed, set out to help the aboriginal peoples,

who for the past 200 or 300 hundred years have been ignored by previous governments, was again at an impasse. As I mentioned, the companion resolutions are very minimal and basically a last resort, because we would like to see an amendment to the Canadian Constitution and another, second round of constitutional reform.

With regard to companion resolutions, we can work out the wording. They are designed to set the stage for possible resolutions in dealing, for example, with the province of Ontario. If it requires a bilateral process, we are prepared to do that also. If it means working within the federal government and the province, we are prepared to do that also. Maybe Mr. Reid would like to--

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Mr. Reid: It is probably important to note that no Legislature could kill the accord, even if it wanted to, before 1990, so we do have at least two years for the process of companion resolutions to take effect. The first one, attached to Mr. Recollet's speech, is the one that would of course require a first ministers' conference to deal with an amendment to part II of the act of 1982. That would be the procedure. Simply by initiating a resolution, such as the one attached to the speech, the Ontario Legislature would force a first ministers' conference to consider that proposed amendment to the Constitution. As Charles said in his speech, it probably would not require lengthy debate or meetings. It would probably be a simple matter since it simply calls for a revival of aboriginal constitutional discussions.

We can certainly provide the committee with wording for two other companion resolutions as well, the draft wording which would deal with appointments to the Supreme Court and the creation of provinces.

Mr. Eves: I take it that you would prefer some specific amendments to the accord but that your bottom-line position, if you have one--or, to put it that way--is the companion amendment procedure. Some of the other aboriginal groups that have appeared before us have had a much, shall we say, weaker bottom line. I think their absolute bottom line was that the very least they would like to see was that the whole subject of aboriginal rights and pursuit of self-government be added to the list, in fact be first on the list, at the next round of constitutional talks, ahead of Senate reform and fisheries.

I gather that your bottom line is somewhat stronger than that. Is that a correct assumption?

Mr. Recollet: That is correct. I think our bottom line is that we support the recommendation by the federal Senate committee and recommendations 6 and 7--if you had an opportunity to review them--regarding the distinct society of Quebec, the recommendation of having distinct societies for aboriginal peoples and the issue of recognition of treaties which relate to land claims for Ontario.

We would like to see the second round of constitutional reform, but as we mentioned in the presentation, we had a list that is exhausted by the premiers representing the provinces and the representation from the territories and the federal government. I think the aboriginal peoples, being the first inhabitants of this province and Canada, deserve at the least the right to have self-government within their own country.

At the same, if you bog it down with other constitutional matters where you bring in the local leadership of the provinces, the federal government and the territories, it is quite obvious there will be, as I mentioned, tradeoffs, payoffs and deals made on the side and the whole issue of the aboriginal rights will again be put on a back burner.

We would like to see a separate process dealing with the constitutional issue of the aboriginal peoples of this country and this province. It has to be dealt with. Our constituents from all over Ontario--as I mentioned, we live in urban and remote rural areas--are treated like second-class citizens in our own backyards, and yet we have some of our provincial leaders, premiers and the Prime Minister going across all over the world saying that we have been taken care of by their various levels of government, which is not true.

We have people still living in Third-World conditions up in northern Ontario, in dilapidated housing which, as you all know, was in that very thin line or circle. You live in a dilapidated shack where it is 40 degrees outside and you can still see the snow flying but there are no storm windows on. If you have poor education, you are going to have poor employment. The whole society is affected within that community.

Mr. Elliot: I would like to thank you very much for your presentation, too, because it is a very comprehensive one and because it does give a proposed solution to a very meaningful problem that has been drawn to our attention by at least six presentations now. Those, coupled with the ones from the territories, mean that there are large groups of people out there who were not addressed at all in the process that was followed in coming up with the accord that we are trying to come to grips with here.

What I would like you to help me with is coming to grips with the magnitude of the problem. As was said previously, the proposals are quite divergent in their suggested remedies. You are aiming at self-government and I think our role is to assist you in that regard. Now you represent a large group of people in Ontario. Some of the other people did as well, and they argued for a place at the table with the first ministers, for example.

What I am wondering about is how far down the line are we from a situation where we could come up with a formula Canada-wide? One of the other ingredients with some of the other groups in all of this that is not present in your brief is the fact of nationhood. They really treat the federal government as the one they wish to discuss these problems with finally.

There are some Ontario problems that can be sorted out, but in the final analysis, Ontario is not a sovereign state and the provincial premiers, the Prime Minister of the country and whoever represents these other groups are going to have to come to a table and come to some sort of an agreement constitutionally. I was getting the impression from a couple of the other groups, at least, that it is a long, involved process, and I agree with you that there has to be some sort of a regular, continuous discussion taking place, as was the case between 1982 and 1987.

Assuming that is reactivated, what do you see as the time frame and whom do you see representing people Canada-wide, that kind of thing?

Mr. Recollet: You mentioned you heard from other groups in Ontario. I assume you are talking about the aboriginal people who are legislated under section 91.24. Maybe 99.9 per cent of them are on a reserve.

Mr. Elliot: Yes.

Mr. Recollet: Our people, the constituent base which we represent, live off-reserve. We do not have any federal legislation at this point in time. The only recognition we have is in the Canadian Constitution, section 35, where it does recognize aboriginal peoples as Indian, Inuit and Metis. But I know when you see that particular clause you figure: "The Metis and the Inuit are not governed by federal legislation. They should have the same rights as our brothers and sisters living on reserves." Well, we do not.

For example, the Indians have land bases, the Inuit have land bases, some form of self-government on a reserve. We do not have that. Our constituent base is still landless, but our birthright is what gives us that special relationship to the land in this province. We should never have relinquished unless it was done with undue force.

As far as initiating the process, I would like to see the process started tomorrow if there was the dedication from the premiers, the Prime Minister and the territorial representatives. I think the process is there. If the political will is there, we can initiate it and come to a conclusion. This problem has not been around for two years; it has been here for 200 to 300 years, before 1763 and before 1867. The assimilation process of aboriginal people has been on the minds of Europeans who came to Canada in the early days and, I think, in 1969 with the white paper trying to involve or eliminate some of the reserve systems.

The ministers and the officials over the five-year political process knew what the aboriginal people want, but I think our problem is to get that political agreement, to sit down, as somebody mentioned, to discuss something in camera here. Sit down and we will start drafting up the context of an amendment to the Canadian Constitution and the right to have self-government within the Canadian federation, which I personally feel, if I were the Premier, I would not have any problem dealing with that in Ontario. I think the process should be started as soon as possible, the second round on reform, even before we entertain the Meech Lake accord.

Our rights as aboriginal peoples, the first inhabitants of this province and right across Canada, have been tarnished greatly and until we get back to that second round of constitutional reform, I think we are still going to be at a loss.

Mr. Reid: The Ontario Metis and Aboriginal Association has endorsed a proposal by the Native Council of Canada, which was jointly written with the Inuit Committee on National Issues, which proposes a new process for reviving aboriginal constitutional reform. It proposed a two-track process of officials' meetings and ministerial level meetings. The process is actually very similar to the one that was used successfully to reach the Meech Lake accord. It was actually discussed with federal officials at a meeting about six months ago, and they responded favourably to it.

Ontario has been advised of the position as well but has not responded yet. The aboriginal summit, the four aboriginal groups, jointly wrote to Prime Minister Mulroney about three weeks ago, in early February, setting out five points similar to Quebec's five points--similar simply in the sense that there are five points--which should be addressed in an aboriginal constitutional amendment and proposing that the process be revived. But again, we have not received any response yet.

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Mr. Chairman: Could you send a copy of that to the committee?

Mr. Reid: Sure.

Mr. Chairman: That would be helpful.

Mr. Elliot: I have a supplementary. I am still not quite clear in my mind whether you feel comfortable in these preliminary negotiations being with the government of Ontario as opposed to negotiating for constitutional amendments with the federal government.

Mr. Reid: We have taken the position that all of this is without prejudice to our position that the federal government has overriding responsibility for all aboriginal peoples. It is our position that class 24 of section 91 includes all aboriginal peoples, notwithstanding the fact that the federal government historically has taken a position, and still takes a position, that it is responsible only for status Indians and Inuit because of one court decision back in the 1930s.

Our participation in self-government discussions with the province is from the point of view of the simple fact that we are looking at several areas of jurisdiction that are currently matters of provincial jurisdiction. We cannot discuss it in a vacuum; we have to discuss these with the province. But it is without prejudice to our position that the federal government is the one responsible for aboriginal issues, since our treaties were made with the federal crown.

Mr. Elliot: Excellent. You have helped a lot.

Mrs. Fawcett: Mr. Chairman, could I have a supplementary on that?

Mr. Chairman: Yes.

Mrs. Fawcett: Are there problems with getting this sort of national consensus and national unity among the aboriginal peoples? Are there any problems financially or otherwise?

Mr. Recollet: It is pretty hard to speak for the national organizations--namely, the Native Council of Canada, the Metis National Council, the Inuit Committee on National Issues and some of the first nations--but as Mr. Reid has mentioned, we have received correspondence, a letter co-signed by four national leaders addressed to Brian Mulroney, calling for the initiation of a second round of constitutional reform. When the four national leaders put their John Henry to a document to the Prime Minister, I think a sign of unity and solidarity would be there in initiating some sort of process related to the right to have self-government entrenched in the Canadian Constitution by an amendment.

Again it comes back to whether there is willingness by the Prime Minister of this country. The response that the NCC received when we were in Ottawa last week was that he referred it to his Minister of Justice, Ray Hnatyshyn. Ordinarily, when you get four national leaders representing all the aboriginal peoples right across Canada and he has to refer it down to his Minister of Justice, there is definitely something wrong. Is he prepared to enter seriously into constitutional negotiations again with all aboriginal groups of Canada or is he just going to start passing the buck to his Minister

of Justice? That is where our problem is, not only with Ontario but with our national body, the Native Council of Canada.

He could have taken the bull by the reins and said in his letter of May 1: "Ray Hnatyshyn, David Crombie and William McKnight will sit down with you, along with myself. I will chair the meeting with the four national groups and we will initiate a process. We will talk about the process and we will seriously ensure that we do get something going as far as an amendment is concerned." If I have to start a whole round of negotiations getting the officials and the ministers involved, it is very lengthy and costly process, but there has to be that commitment of the leadership at the federal level as well as the provinces and territories.

Mr. Allen: I am pleased that the Ontario Metis and Aboriginal Association has come before us and that Mr. Recollet has presented a rather comprehensive brief for us on the whole question of aboriginal amendment rights. I must say I want to compliment you for bringing forth a proposal which I think is eminently workable with respect to the companion amendment concept. It appeals to me for more than one reason.

I must say I am not particularly in favour of writing constitutional agendas into the Constitution. I think that, on the one hand, while it is true that native peoples and the territories were the two definable groups that lost in the leap from the Constitution Act, 1982, to the Meech Lake accord, because items that were in fact written down and commitments that were made and were cast in stone, virtually, have been lifted out of the constitutional documents and not replaced.

But the item that pertained to yourselves was essentially saying that something should be on the agenda. To my way of thinking, that is not a particularly appropriate content for a constitution, which ought to be defining specifically what the rights are and what the relationships between the parties are who are coming together to work together in this nation. That, of course, is where we want to get the aboriginal rights question to in the reasonably near future. So I am delighted with the concept of a companion amendment and I think we should certainly put a bit of force behind forwarding that idea.

But you are the first group who have come and used the language for us "unique aboriginal amendment formula." I must say that, in hearing you run a lot of numbers by me there and all those sections of the Constitution Acts, 1982 and 1867 and so on, I was not left with a very clear sense as to what precisely the unique aboriginal amending formula was that you were referring to and what specific clause enshrines it. Was it the formula of seven provinces and 50 per cent of the population? What was the formula that you identify as being the unique aboriginal amending formula?

Mr. Recollet: I think that refers to section 38 of the Canadian Constitution, part V.

Mr. Allen: Section 38?

Mr. Reid: What we mean by "unique" is the fact that there is not simply one section that can be used for amending the Constitution on aboriginal issues. It simply depends on the subject matter. If we are going to amend section 35 to further define what aboriginal and treaty rights are entrenched in the Constitution, then we are talking about the general amending formula. But again, if we were talking about something within the subject

matter of sections 41, 42, 43, 44 or 45, those procedures could be used.

Mr. Allen: If it had to do with alteration of boundaries, if it had to do with federal powers, if it had to do with Lieutenant Governors, provinces, things like that.

Mr. Reid: Right. There are matters within those areas, for example, that are affected by the Meech Lake accord as well. It is not simply a matter of section 38 not being affected, so we are all right. What we are saying is that there are other areas. We could have used these other sections in the past for constitutional amendments if the issue came within one of those sections, but that opportunity will probably be lost now.

Mr. Allen: So then there was not a single, unique aboriginal amending formula.

Mr. Reid: It would be the whole package.

Mr. Allen: OK. In other words, you are talking about the way in which the package of amending options could be utilized--

Mr. Reid: Right. It includes the process.

Mr. Allen: --by the aboriginal peoples in order to forward their claims with respect to one subject matter or another, and that, of course, would bounce around among different clauses here.

Mr. Reid: Right. Part II also, of course, required--I think it maybe goes without saying that this is unique again--that when amendments affecting aboriginal peoples were discussed, the aboriginal leadership would be invited to participate. Again, that process does not exist any more; it died in April of last year. The companion resolution 1 partially addresses that problem and would revive that part of the aboriginal amending formula.

Mr. Allen: Yes, but the precedent still exists because it was done, and that is good; but, as you say, there is no reading which tells us legally that there is any obligation to continue it.

But the question did come up yesterday with respect to whether aboriginal self-government was normally considered to fall under the unanimity principle as affecting federal institutions or whether it would come under some other amending formula. What is your sense of that?

Mr. Reid: An amendment simply to define self-government as an aboriginal right would come under section 38, we think, but we do not know.

Mr. Allen: Section 38. You are bouncing me around again. It comes under which--

Mr. Reid: Section 38 is the general amending formula.

Mr. Allen: Yes. In other words, not under the unanimity principle.

Mr. Reid: If, for example, an amendment on self-government sought to address class 24 of section 91, which is simply the part of the British North America Act that gives the federal government responsibility for Indians and lands reserved for Indians, if we sought to address that, it would involve Senate powers and obviously then, under Meech Lake, we would be dealing with

the unanimity rule.

Mr. Allen: OK, that is fine. Thank you.

Mr. Chairman: I want to thank you again for coming. In particular, if you could send some of those drafts to which you referred, as well as that process item--I believe the clerk left you our address--they would be very helpful. I think we really do want to sit down and reflect upon a number of thoughts you have put out here. Thank you very much for setting out not only the concerns but, as I said before, also some routes that we could follow to get resolution of some of these.

Mr. Recollet: As I have mentioned, OMAA supports the Senate committee in making that recommendation on the issue of the distinct society and the recommendation in relation to treaties and in relation to the northerners, but at the same time we do require the second round of constitutional reform for aboriginal peoples. We even go as far as saying let us resolve that issue before we proceed with Meech Lake because it is the people at the grass-roots or community level who are going to continue to suffer.

If that agreement is signed, who is to say they are going to start negotiating or dealing with the aboriginal peoples not only of this province, but also across Canada? I think we are all going to be victims of society again. The main lawmakers or decision-makers of this country, who are non-native, will be holding us as prisoners for ransom in our own provinces and communities, and only the future will determine the fate of Canada and the province of Ontario.

Mr. Chairman: In looking at our schedule, I have asked the clerk if she would speak with Mr. Latrémouille. I apologize, sir, but I understand it would be agreeable to you to come at two o'clock. I think probably everybody needs a bit of food and sustenance. We want to be sure to give you a fair hearing. With that being said, I will adjourn our proceedings until two o'clock this afternoon.

The committee recessed at 12:23 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, MARCH 8, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

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Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Morin

Clerk: Deller, Deborah

Witnesses:

Individual Presentation:

Latrémouille, Claude

From the Disabled Women's Network of Toronto:

Stimpson, Elizabeth, Chair

Wood, Sharon, Assistant to the Chair

Popkey, Carol

From B'nai Brith Women of Canada:

Feldman, Hannah, Public Affairs Chairman

Rose, Ruth, President

From Brantford Ethnoculturefest:

Bucci, Vince, President

Jenkins, Rita Marie, Acting Executive Director

Individual Presentation:

Turner, E. A.

LEGISLATIVE ASSEMBLY OF ONTARIO
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Tuesday, March 8, 1988

The committee resumed at 2:03 p.m. in committee room 1.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good afternoon, ladies and gentlemen. We will begin our proceedings as people grab a coffee. I will call upon Claude Latrémouille to come forward. Again, if I can apologize, Mr. Latrémouille, we were not able to hear you this morning. We very much appreciate your being able to wait until the beginning of this afternoon, at which time you will find everyone, having had something to eat, will be the fresher for the experience.

We are very glad you came. We have copies of your presentation, so perhaps we will simply begin. If you would like to make your presentation, we will follow up with questions.

CLAUDE LATREMOUILLE

Mr. Latrémouille: Maybe I should introduce myself a little. Even though I am a private citizen, some members may want to know where I come from.

I consider myself to be a student of the Constitution. I have been so since the age of about 17 years. I am considerably less young today, but it is a subject which has retained my attention for quite some time. Also, I am a Quebecker, not only because I was born in Quebec but also because, prior to December 1791, where we are standing now used to be the province of Quebec. Sometimes many people forget that.

I wonder if it might be appropriate, Mr. Chairman, since my written submissions are rather short, if the members of the committee might be allowed a few moments to have a look at them, and then I might summarize them in a narrow form.

Mr. Chairman: If you would like perhaps for the record, because there is a full Hansard, I might suggest that you read it into the record. That then also gives us a chance to reflect on it.

Mr. Latrémouille: I shall do so. I wish to point out to the committee a serious error of fact in the document under consideration, the draft resolution. The error is to be found on page 6 of the English version of the document. It is in the preamble, the first paragraph of which says, among other things, "following an agreement between Canada and all the provinces except Quebec."

Although it is widely believed that such is the case, the committee will note that no province gave its consent to the Constitution Act, 1982. It is a fact, however, that nine of the 11 first ministers opposed without reservation their signature to a document dated November 5, 1981, at Ottawa. The first minister for Manitoba signed the document "subject to approval of section 3(c) by the Legislative Assembly of Manitoba."

It is well known that an 11th signature is missing from the document, that of the first minister of Quebec.

Constitutionally speaking, however, the matter does not end there. For a province to be bound by the signature of its first minister, its own Legislature must be seized of the matter and its consent formally obtained before one may say that a province has agreed. In 1981, only Messrs. Davis, Buchanan, Hatfield, Lyon, Bennett, MacLean, Blakeney, Loughheed and Peckford agreed. On the federal scene, matters were dealt with properly since Mr. Trudeau submitted the document he had signed to the ratification of the House of Commons and of the Senate of Canada.

In Quebec, the National Assembly was indeed seized of the matter and at a special session commenced on November 30, 1981, debated it, as is the custom in a free and democratic society, and finally voted the next day on a motion stating the reasons for its refusal to accept the November 5 agreement. Quebec was then, and has always been, the only province to have been consulted on the Constitution Act, 1982, and it rejected it. In Ontario, as in all other provinces, the November 5 agreement was never submitted to the Legislature. As a result, Ontario's consent and that of all other provinces was never given to it.

On the judicial front, a full bench of the Supreme Court of Canada unanimously ruled in the anti-inflation reference, which was reported in 1976, 2 SCR, starting at page 373, that the government of Ontario cannot bind the province of Ontario unless the agreement it makes with the government of Canada is approved by the Legislature.

Applying this principle to the 1981 constitutional tractations, one is brought to conclude that the agreement referred to in the first paragraph of the preamble to the resolution to authorize an amendment to the Constitution of Canada was not made between Canada and all the provinces except Quebec, but between the government of Canada and the governments of all the provinces except Quebec.

The committee is therefore urged to recommend to the Legislature an amendment to the first paragraph of the preamble so that its wording be in keeping with the nature of the agreement to which it refers. The amendment could read as follows:

"Whereas the Constitution Act, 1982, came into force on April 17, 1982, following an agreement between Canada and the governments of all the provinces except Quebec," etc.

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That concludes my written submission. I might want to add that since the recommendation I am making to the committee does not change the content of the draft resolution, that is, its substantive clauses, it might be more politically feasible or acceptable to have the preamble amended without raising any big cries in other legislatures and even in Ottawa.

The second reason, of course, is that if the document contains an error of fact, which I believe it does, it is more serious than if such an error were part of a bill that the Legislature passed because that can be changed at any time. From a historical point of view when people will read those documents in the future, for accuracy, it seems to me that one should not allow an error of fact to creep into a preamble of a constitutional resolution.

That is why I feel strongly about that even though I have many feelings about the rest of the Meech Lake accord since nobody, I believe, to my knowledge, noted that particular point before you so far, I felt that it was necessary for me to raise it. That is basically my presentation.

Mr. Chairman: You note the anti-inflation reference and you have done that in simple terms, now could you just refresh us on the meaning of that? Why was that an important point?

Mr. Latrémouille: First of all, maybe to summarize the case itself, the Supreme Court of Canada was concerned with two questions. One was the big case, which was whether the federal government had the jurisdiction to enact what they did enact in 1975 concerning anti-inflation measures. I say that was the big case because that is the one which made the headlines and was talked about most.

But there was what I would call the small case, which related specifically to Ontario. The question which was asked of the court then was whether the government of Ontario, through the signature of its minister--I believe it was Mr. Bennett at the time--through an order in council had the power to bind the province and therefore bind the citizens of the province and in particular in that case it was the civil servants and the teachers of Ontario who were brought under the umbrella of the federal anti-inflation measures through an order in council.

I believe it was Aubrey Golden of Toronto who argued the case in front of the Supreme Court of Canada. He was successful and his argument was Mr. Davis or Mr. Bennett or even the cabinet does not have the constitutional authority to bind the citizens of the province, and therefore the civil servants or the teachers, without coming first before the Legislature to have their agreement ratified by the Legislature.

The Supreme Court, even though it was divided on the big case, that is whether the feds had the right to do it or not, on that case, the nine judges were unanimous. They all concluded--and I believe the main reasons were written by Chief Justice Laskin--that the Ontario government did not have the power to bind the citizens of Ontario, and therefore the teachers and the civil servants, just by order in council. They had to come before the Legislature.

The reason this case is somewhat relevant to the present draft resolution is that it seems to show the principle that whatever Mr. Davis did or whatever Mr. Peterson does now, although now he is forced by statute to come here to have it ratified, in 1981 there was no such statutory requirement. But to say in the preamble today that the provinces were consulted, one would have to say they were consulted through their Legislature, and they were not. That is why I raise the anti-inflation reference.

Mr. Chairman: In that regard, in terms of the 1981 or 1982 agreement, what significance would that point make to the legality of that agreement? Was there a vote in the Ontario Legislature? I do not believe so, but I honestly do not remember.

Mr. Latrémouille: No, there was not. As a matter of fact, there was one witness before you a few weeks ago who said that the Legislature had decided in 1982 about the charter, etc. I believe it was Mr. Finkelstein.

Mr. Chairman: Yes.

Mr. Latrémouille: He was wrong on that point. The legislatures were never consulted in 1981 or 1982. There was no vote at all.

Mr. Chairman: Is it your feeling that if somebody were to take that to court, there is a case?

Mr. Latrémouille: In terms of court, I am not sure, because there are two points to consider: whether we are dealing with conventions and whether we are dealing with law. In terms of constitutional conventions, because no province was consulted, therefore, the Canada Act 1982 is unconstitutional in the conventional sense. As far as the legal sense is concerned, whether a court would find that, even though the provinces were not consulted, the mere fact of Westminster, the British Parliament, having passed the act, is that sufficient? Is that constitutional in the legal sense?

That is slightly more doubtful because they may say: "Well, still legally, it was done. It does not matter whether the provinces were consulted. Even though, in terms of constitutional convention, that was not appropriate, legally, it was."

My purpose today is not to try to pass judgement on the legality or not of what happened in 1981 but to make sure that the statement of fact contained in the 1987 resolution reflects the state of facts that occurred then.

Mr. Chairman: Can I ask one question which, instead of looking to the past, looks to the future? This obviously would not work in this case with the Meech Lake accord, because of 1982, it must come to the Legislature and simply would have no validity unless it did so, but that is because it is spelled out.

Mr. Latrémouille: Right. Of course, it is the legitimacy of the whole thing which is the worst situation because in terms of the legitimacy, what we have is the Parliament of the United Kingdom passing an act telling the Legislature of Ontario, among others, that it has such-and-such powers or that it does not have such-and-such powers, without ever asking it. That is without precedent.

In the past, the powers of the legislatures were never affected to that degree when they passed constitutional amendments. So that is the significance of it. But all I am concerned with now is that the facts of what happened in 1981-82 not be distorted by the text of what has been agreed to in 1987.

I could say, whether you change it or not, it does not change the fact that the legislatures were not consulted in 1981, but my personal satisfaction in reading a constitutional document is that maybe we should have the facts straight. Even if we do not agree on the substance of the resolution itself, at least let us have the facts straight.

Mr. Chairman: I think that is a very clear point. Do you have a query, Mr. Allen?

Mr. Allen: No, but I do think the facts and having them straight are quite material matters since there could conceivably be a matter of power and authority that derives obviously from words in these documents. Clearly, if this were to be the accepted interpretation, in practice, it would certainly give more authority to that document than apparently it does have.

It had not really seized me as to how significant that might well have been, in practice, because it would be a significant departure from even what happened, I believe, in 1867. Did not all the legislatures consider the resolutions from Charlottetown and Quebec?

Mr. Latrémouille: In 1867, there was one legislature, as far as Canada was concerned, right? I do not know what they did in New Brunswick and Nova Scotia, but these were the only three colonies at the time that were involved in the initial creation of the British North America Act, although the others were mentioned I believe in 146 or something. The others were mentioned as potential entrants to the union. So I do not really know if the three legislative assemblies of Canada, New Brunswick and Nova Scotia did, in fact, consider all the resolutions of Charlottetown and Quebec.

Mr. Allen: The Quebec conference.

Mr. Latrémouille: The Quebec conference, but then there was the London conference afterwards where a few more sections of the act were added. So, in fact, we could say that the legislature did not consent.

Mr. Allen: Not to the final text, that is right.

Mr. Latrémouille: But in those days, though, the question was not as crucial because nobody had the power to amend the BNA Act because the BNA Act did not exist.

Mr. Allen: Of course.

Mr. Chairman: Lawyers will always find ways around those things, I am sure.

Mr. Latrémouille: The best argument against what I am trying to say is that because, in the past, the legislatures did not always agree to whatever changes were made, therefore, there was no requirement, but I am not arguing that there was a requirement. I am arguing that it did not happen.

Mr. Chairman: I want to thank you for bringing forward what is definitely a novel point that I do not think anyone has mentioned. The reference to the anti-inflation case is a most interesting one.

Mr. Allen: It occurs to me that, obviously, Mr. Latrémouille has reflected a good deal on constitutional matters. I wonder if there are any other observations he would care to make while he is here, having come this distance, with respect to the more constitutional issues involved in the accord.

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Mr. Latrémouille: Of course, I am burning to give my opinion on the famous section. That is the question of whether section 16 overrides, section---

Mr. Allen: Well, do it, please.

Mr. Latrémouille: I am so happy to have witnessed your first week of hearings because it was a delight to hear the ladies and gentlemen that appeared before you on the first week of your hearings. Also, it was the presentation by, among others, Mr. Maldoff, who made a very clear case about

the fact that section 2 does, in fact, override the charter and almost everything else in the Constitution itself, with the exception of the subsections that are mentioned in section 16.

The only thing I might want to add to his presentation, which was quite complete, is that it seems that few people mentioned the most obvious: Whenever there is an enactment which follows another one on the same subject, automatically it takes precedence. That is what an amendment is. Nobody, to my knowledge, mentioned that yet. They mentioned the principle of *inclusio* and *exclusio*, the fact that they mentioned a few things, therefore it means that the others are excluded. They mention the fact that section 2 is part of the Constitution, it is not part of the charter, therefore section 28 does not apply because section 28 talks about everything in the charter, not everything in the Constitution. So, basically, I would say that I have absolutely no doubt that section 2, as drafted, would take precedence over the charter itself and over whatever else would be in the Constitution except *le partage des pouvoirs*, the sharing of powers, between the feds and the provinces because that is specifically mentioned in section 2.

So, there is no doubt in my mind that it does override that, and that is probably why Quebec agreed to it. So, I do not quite see the game that was played at the beginning that it was just an interpretative clause. Well, it is an interpretative clause but it is also part of the Constitution, and therefore, it has some substance to it.

Mr. Allen: Do you have any observation on the question as to whether the section 28 of the Charter dealing with male-female equality rights is adversely affected by section 16?

Mr. Latrémouille: It is not adversely affected in that way. It is rather that it applies to the entire charter, and section 2 has nothing to do with the charter, it has to do with the entire Constitution. I am talking about the draft, the future section 2 of the Constitution Act, 1867.

Mr. Allen: No, I was referring to section 28.

Mr. Latrémouille: Right.

Mr. Allen: Male-female.

Mr. Latrémouille: But that section refers, I think it says something about the entire charter, nothing in this charter--I may want to refer to it.

Mr. Allen: Yes. Notwithstanding anything else.

Mr. Latrémouille: In the charter.

Mr. Allen: Yes.

Mr. Latrémouille: So, if it is notwithstanding anything else in the charter, then anything which is outside the charter has nothing to do with section 28. I believe Mr. Maldoff mentioned that.

I believe your best guide so far are the statements made by Mr. Maldoff because he was quite comprehensive and quite accurate in almost everything he said.

Mr. Allen: OK.

Mr. Chairman: Thank you very much for bringing your presentation to us, as well as your other observations. We appreciate it very much. Again, I apologize for having you wait longer than you would have expected to make your presentation.

Mr. Latrémouille: It is OK, Mr. Chairman. I thank the committee.

Mr. Chairman: OK, thank you very much. If I might now call upon the representatives of the Disabled Women's Network, Dawn. Elizabeth Stimpson and Sharon Wood. I wonder if you might just sit on either of these chairs. It's just a little easier--

Thank you very much for coming and joining us this afternoon. I apologize for the delay but I hope it wasn't too long. We have before us a copy of your submission. If you would like to take us through it, we will follow up with questions.

Mr. Allen: What was the exhibit number?

Clerk of the Committee: Number 167.

THE DISABLED WOMEN'S NETWORK OF TORONTO

Ms. Stimpson: Mr Chairman and members of the committee, I beg the committee's indulgence. I am on several drugs which have the effect of slurring my speech so if I say something very bizarre or off the wall, please excuse me. This brief is presented by the Disabled Women's Network of Toronto. We are the voice of the disabled women of Metropolitan Toronto. This brief will deal with the repercussions that will be felt by all disabled women should the Meech Lake accord ever come into law. It deals with the lack of understanding given to social justice and equality by the Premier of this province who has betrayed us doubly--as disabled women and as able women. The Meech Lake accord fails to entrench women's rights and also destroys the rights of our sisters who are black, native, ethnic and those who have different sexual orientation.

If we could believe that the Charter of Rights and Freedoms which is enshrined in the Constitution would take precedence over the accord, then women would not be so twitchy.

The patronizing attitude of the men who blithely signed this accord obviously without thinking about it very carefully or consulting their constituents shows how much the federal government was willing to sign over its powers and just how willing the provinces were who were greedy enough to snatch the power up.

Ivan Illich has made the statement that there is a correlation between what we think and what we write. Therefore, the language we write in has a very close relationship to what we think.

One of the great Quebec women and one of my personal heroines, Madame Solange Chaput-Rolland, has in somewhat maudlin terms written about the Meech Lake accord thus:

Ms. Wood: "Inside Quebec, seven years ago, we decided that Canada was our country. We have yet to find out whether our loyalty was well placed. Frankly, in 1982 I wondered if the agonies, the pains, the quarrels, the

bitterness following the referendum had been necessary. We voted for Canada; Canada through its central government totally absorbed in its will to patriate the British North America Act of 1867, cared very little about those who had openly stated their will to remain linked to this country. Promises and dreams were shattered; but not a single Québécois will want to go through such emotions again. You English-speaking Canadians have asked during years; what does Quebec want? Now you know. It has been described in five proposals not written by constitutionalists, jurists or nationalists; but by men duly elected by 'we the people.'" From the report of the joint committee.

Ms. Stimpson: I disagree with Madame Chaput-Rolland and further, the languages of English and French were enshrined in the Constitution of 1862 equally. The Meech Lake accord makes no pretense of being a truly Canadian document. Instead, it is a totally Tory document. The bias shrieks out in the following passages:

Ms. Wood: From section 9 of the accord amending section 41 of the Constitution Act, 1982:

"An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

"(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

"(b) the powers of the Senate and the method of selecting Senators;

"(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of senators;

"(d) the right of a province to a number of members in the House of Commons not less than the number of senators by which the province was entitled to be represented on April 17, 1982;

"(e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

"(f) subject to section 43, the use of the English or the French language;

"(g) the Supreme Court of Canada;" and on and on.

From section 101A, on the Supreme Court of Canada:

"(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

"(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal."

101B (1) states: "Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least 10 years, been a judge of any court in Canada or a member of the bar of any province or territory.

"(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least 10 years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec."

Ms. Stimpson: This convoluted prose betrays a subterfuge behind the tortured ideas of those who wrote these words. One can only wonder at the Premiers who are not Tories signing such a document. The Premier of Ontario, David Peterson, promised the citizens of this province hearings, but after he had become secured after the September election, he had the unmitigated gall to make the statement that he had no intention of unravelling the Meech Lake accord. Is he in his Marie Antoinette phase just sloughing us off with a wave of his hand saying, "Let them have hearings"? Perhaps he should have consulted his constituents before he signed this, as it is our constitutional and democratic right to have our views seen and heard.

Pierre Teilhard de Chardin has said the following:

Ms. Wood: "The social aspirations of man cannot attain full originality and full value except in a society which respects man's personal integrity."

Ms. Stimpson: Did the Prime Minister and the others sign over democracy like they signed over everything else, like women's rights?

The Meech Lake accord has several components to which I would like to speak.

1. The disenfranchisement of women's rights: Women's rights are not enshrined in this accord. Attributed to the Prime Minister is the rather trite statement that we do not have to worry out pretty little heads about them. Is it really above our heads or it is behind our backs? Trust them? Trust is an anomaly with this government, as it is with all the first ministers of this country. Can we believe and/or respect a man who would say that if you are against the Meech Lake accord, you are against Quebec?

2. The denial of rights of our sisters who are aboriginal, black, ethnic, elderly and disabled: The marginalized groups are not found in this accord. The most vulnerable people in our society are both the disabled and the elderly. Perhaps you are familiar with the report by Dr. Carruthers on the overuse of drugs and the drugging of elderly people under this very system.

The vulnerable people of our society are treated badly by all the bureaucracies from health care to welfare. Disabled women have a very difficult time organizing (a) because of our handicaps, visible and nonvisible, which grind us down, and (b) lack of funds. Disabled women have to spend long, tiring hours meeting, discussing, travelling and begging for assistance. I imagine this would be also true for other marginalized groups. Why is it that the government of this country feels that it can really treat a very large segment of our society with complete contempt?

3. The transfer payments, rollbacks or shared-cost programs, whichever

you want to call them, which give moneys to the provinces for such things as welfare, health and public works: These are the most practical and frightening aspects of the accord. The following passage will show my concerns:

Ms. Wood: "106A(1) The government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives."

Ms. Stimpson: Professor A. W. Johnson, who is not some Martian who just dropped down from outer space but a man who has been in this area since its very inception, has been able to clarify the gobbledegook from the accord with the following statement:

Ms. Wood: "The only requirement the opting-out province would have to meet is that it carry on a program which is compatible with, which is to say capable of existing alongside, the national objectives the government of Canada was seeking to achieve by its national program...."

Ms. Stimpson: In the field of health care, there is nothing guaranteed that says a province could not opt out or roll back its health care. We have had a very frightening example in recent history where three or four provinces abrogated health care to themselves and refused women access equally to health care. It is this precise contempt for the law that makes women very frightened about this.

For disabled women, the horror show is equally terrible. We need to use welfare for our drugs. We also need the health care system, because we have family physicians, we have specialists and we need to use hospitals. Will we be getting all this if Meech Lake becomes the law of the land? We also need to use the health care system for such things as assistive devices like wheelchairs and crutches and the welfare system for medical equipment such as compressors for asthma, etc. All things such as health care, welfare, day care and education impact on the lives of disabled women. Nothing in the accord guarantees us anything.

4. The support we give to Quebec: We are here to fly in the face of the Prime Minister and say we are against the Meech Lake accord and for Quebec as a distinct society. In 1980, Quebec said yes to Canada, and as far as we know, Quebec has never been out of Confederation. We stand with our disabled sisters in Quebec, both francophone and anglophone.

5. The destruction of our country: Canada was not brought into Confederation easily or willingly. It took very strong, highly imaginative leadership and, at times, compromise and chicanery. This Confederation was founded on a very strong federal government and provinces which had their own powers and rights. But this whole system was shredded in a most cavalier manner in June 1987 behind closed doors. One can only speculate why this was done. The conspiracy theory might read that smaller entities are more easily picked off by the American vulture--I mean eagle.

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One might ask why the Prime Minister felt it necessary to divest the federal government of all its powers, investing the provinces with all powers, and one with disproportionate rights.

Women traditionally have had a harder time to make their voices heard in anything concerning politics or government, but disabled women have five times more difficulty. Under the accord, we will no longer have to lobby just to a federal body; we will have to lobby in 10 provinces. The travesty called the Meech Lake accord writes out so-called law and justice for everyone who is not heterosexual, male, white and socially advantaged in our society.

Women are not some pipsqueak minority which can be overlooked any more. We make up over half of this country and we demand that our rights be treated equally with our numbers.

We have been denied our constitutional right to hear what is in the Meech Lake accord and to have our voices heard in open discussion. Governments seem to feel it is their right to bring out in the summer what has been called the "great summer exposure," hearings and reports of commissions, so we had in the summer of 1987 the hearings of the special joint committee of the Senate and the House of Commons on the Meech Lake accord, when no one was around and it was hard for groups to get themselves together, meet with their groups, document, research, make a brief and rush off to Ottawa to present it. Is this someone's idea of true democracy?

The Premier of this province has to stand for all the people, the aboriginal, the native, the black, the ethnic, the disabled and the elderly. We expect him to stand up for our rights and our rights are not contained in this tawdry, self-congratulatory document called the Meech Lake accord.

Mr. Chairman: Thank you very much for your presentation. I would express on behalf of the committee that we are appreciative your organization took the time to put together a brief and come and meet with us. I certainly accept the point you make that whatever difficulties there are for various groups and organizations in coming before a committee such as this, they are much more difficult for an organization that does bring together people with various disabilities. I appreciate the fact you have done that and brought these views to us. Perhaps we can start the questions with Mr. Offer.

Mr. Offer: Thank you very much, Mr. Chairman.

Ms. Stimpson: Excuse me. Could you tell me who you are? I cannot see you and do not know.

Mr. Offer: My name is Steven Offer.

Thank you very much for your brief. One of the things you have spoken about in your brief, and this is merely by way of comment, is that people who come and speak against the accord are somehow put off by some others as being anti-Quebec in some way. By way of comment, through our hearings we have heard a great many people and we still have a number of people to hear in the days and some weeks ahead, some in favour and certainly some against, who raise certain comments and concerns.

With respect to that, in dealing with those who are against the accord, I do not see that anyone on the committee has in any way, shape or form put them aside as being anti-Quebec. I think we have been attempting to understand the concerns and grapple with the concerns because we are going to have to do that in our final report, whatever shape it may take. I do not think anyone in this committee has put that down as anyone being anti-Quebec as opposed to people just having some concerns with a particular document, that they are asking us to meet those concerns. I think that is a pretty legitimate exercise

in that respect.

On that point, I would like to talk about one of the concerns you brought forward, and that is with respect to this whole question of shared-cost programs. It is certainly a concern we have heard in the past. What is recommended in the agreement, of course, is that, one, the federal government can introduce programs in areas of exclusive provincial jurisdiction which was not constitutionally recognized before, and two, because it is in an area of exclusive provincial jurisdiction, the provinces have the ability to opt out.

I know you understand that, but my question is, on that basis, in dealing with this country and in dealing with the very different realities in each province, in principle is it not a pretty good idea that in areas of exclusive jurisdiction where the federal government has chosen to introduce a national program, a province would have the right to take a look at that program and say, "Listen, for this area dealing with disabled women in Ontario, we want to make certain it deals with the particular needs in this province"? We may wish to go along with the federal program, but we also might want to deal with the particular needs in this province. Should that not also be the situation in Alberta, New Brunswick, Prince Edward Island and British Columbia, each dealing with particular needs in the particular province?

My concern is that this section, apart from the concerns you have raised, really does go towards meeting different concerns from different groups such as disabled women. There is that possibility of flexibility now that there really was not in the past. I would like to get your comments with respect to how you are concerned with such a provision.

Ms. Stimpson: My concern is that the provinces have shown total contempt for federal initiatives, as I said, in the case of health care and that is what we are worried about. If provinces are showing such contempt, and Meech Lake is not even the law of the land, I suggest they will have a field day when Meech Lake is the law of the land. We cannot always be running to the Supreme Court for everything. I am sorry, but I could not trust any government of any party to respect federal initiatives and not to opt out of everything it feels like. I just do not believe it; I am sorry. I have seen it happen. A month ago, it happened. How can we trust any province? We cannot.

Mr. Offer: A month ago, it happened?

Ms. Stimpson: Yes.

Mr. Offer: I am trying to understand that.

Ms. Stimpson: A month ago the Supreme Court brought down the abortion ruling. We had four provinces that with total contempt for the law, took health care into their own hands and denied women equal access. I am sorry, but I just do not have the confidence you may have. I do not care what party is in power; I just do not have the confidence.

Mr. Offer: I understand what you are saying. It is just that I think this particular section gives to the provinces--people have come before us and said, "We are a little concerned with the wording and things of this nature," but it gives to the provinces in areas of exclusive provincial jurisdiction a flexibility to meet particular needs. I hear your concerns and I thank you for your concerns, but I just wanted to tell you somewhat how I see it. I just happen to feel that, in the past, the provinces, of whatever government--it

does not really matter--do meet and attempt to meet particular needs, maybe not as fast as others would like it. But the need is always there; I do not know if there is that type of contempt. I thank you anyway for your concern.

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Ms. Stimpson: Could I just make a statement about your first comment?

Mr. Offer: Sure.

Ms. Stimpson: I do not think I said that this committee--I thought I said that the Prime Minister had made the statement that if you are against the Meech Lake accord, you are against Quebec. I certainly never thought this committee had said that.

Mr. Offer: In response, absolutely; I know. I just wanted to make certain.

Ms. Stimpson: No; I understand that this committee would not be here--

Mr. Offer: That is fine. Thank you very much.

Ms. Popkey: I have an example that shows the differences between provinces on this issue--

Mr. Chairman: Can I just ask you for your name?

Ms. Popkey: Carol Popkey, and I am with Disabled Women's Network.

To show the difference, because I would think of the federal program as being sort of the basics that they want to initiate within each province, I am a single parent who was in an accident in British Columbia and was on social assistance because I was abandoned with my children when the second child was still an infant. I then intended to go back to school when she was two or three years of age. But I was in an automobile accident and became disabled, and I cannot go to school full-time or work full-time; I do both part-time.

In the province of British Columbia, dental care was completely covered for my children and me. At one point I had a relapse, and my parents came and moved me from BC to Ontario; so I was living here, first on mother's allowance and then I switched to disability pension. My children's father moved here for a while because I was having such a terrible time recovering, and so the children lived with him for a while. I was on disability pension, and the only dental coverage I had was emergency care, not preventive care, which was just changed this past January. But it was a real shock. There were two years where I had to pay for regular dental checkups.

That is the kind of concern we have: that the federal government is initiating, say, a basic program. If a province wants to improve benefits because we do not get the costs of aids and certain medical prescriptive things covered, that is great; but if the basics are not there, that is where the concern is, that there will be a substandard in certain regions because of this particular option.

Mr. Allen: I want to thank Sharon and Elizabeth, and is it Sylvie?

Ms. Popkey: Carol.

Mr. Allen: Carol. I thank you for coming and representing the Disabled Women's Network before us this afternoon. I must say it is a very eloquent and impassioned document that you have presented before us. In particular, I guess the main message is the sense of disenfranchisement that you feel with regard to the entire process. I think that in many respects you have probably got more reason to feel that than most people, although it is interesting how many people come before us in this committee on this subject and give us that message: that somehow at this date in our history it is very strange that constitution-making should be so much an operation confined to so few people, conducted, apparently, like last-minute labour negotiations, a round-the-clock sort of operation where everybody exhausts himself in an attempt to get some kind of document. That is bound, of course, to produce errors that were not intended, as well as, perhaps, to relieve those who do the exercise of the normal democratic process of popular criticism and input from all of us. I think we certainly hear you loud and clear on that.

The second impression I am getting--and am I correct in this?--is that your principal problem with the accord is that you really do not trust provincial leadership, provincial governments, to respect social programs, health care delivery systems; that--and I gather you used the example of the Supreme Court--the moment they were off the leash, so to speak, they suddenly began doing things that were, well, to put it mildly, retrogressive with regard to the laws that had stood, let alone what it might have been. Is that your concern, the degree to which it appears to provide more powers to the provinces and, therefore, will undermine social programs? Is that your second big objection?

Ms. Stimpson: Yes, absolutely. You see, we have had the example. I am very twitchy about provinces just thumbing their noses at the Supreme Court or the federal government, such as it is; I do not even know whether we are going to have another federal government.

Mr. Allen: That is an interesting observation. I do not think anybody has quite struck us with that one up to this point.

Ms. Stimpson: I think the federal government will only be doling out the money and orchestrating some kind of tenuous foreign policy.

Mr. Allen: A sort of a national cashier.

Ms. Stimpson: Right. Exactly.

Mr. Allen: Yes. I certainly hear what you are saying. What kind of relationships do you feel ought to prevail between provinces and the federal government with respect to shared-cost programming or national programs, that are in particular the ones you depend on?

Ms. Stimpson: The problem is that I do not think the federal government has either the will or the number of bureaucrats to monitor in every province these health care programs, welfare programs or any other kind of programs. I think the federal government should keep a very strong hand on any money that goes out, and should tell the provinces, "This is what it is for and for nothing else." If it has to go to the Supreme Court, then it must follow what the Supreme Court says unequivocally.

Mr. Allen: Okay. I will just move to another question. I was not quite sure what you were saying you disagreed with in M. Solange Chaput-Rolland's comment, whether it was the content of the five points that

were the basis of the Quebec request, or whether it was just simply the language she couched it in, which you said was maudlin. I am not quite sure that I got the message there.

Ms. Stimpson: No. She made the statement that the federal government was totally absorbed with repatriating the Constitution. I disagreed with her somewhat in that because I felt that many, many people in Quebec deplored the links with Britain and were very happy to have that Constitution brought home. That is why I disagreed with her on that point.

Mr. Allen: Oh, I see. So you were not raising a question about the legitimacy of the five points that Quebec finally put forward as a basis for some new discussion and conclusion of the matter?

Ms. Stimpson: No, not necessarily.

Mr. Allen: Okay. Thank you very much. We appreciate your coming.

Mr. Harris: I just have one question. I, too, appreciated the brief and the presentation that you made. I want to ask something so that I may understand a little bit of where you are coming from. You obviously have a very strong distrust of the provinces. Maybe this will seem like a silly question, but would we have better government in Canada if we just did away with provincial governments?

Ms. Stimpson: No, no. I do not have anything against the provinces. I think they have been given too much power and we would not have any federal government any more. That is how I read it. That is how I read it the first minute I heard about the accord.

Mr. Harris: What if we did away with all of the provincial governments; would that satisfy that you would have insured national standards all across the province?

Ms. Stimpson: No.

Mr. Harris: I ask the question because all the areas that you are very supportive of the federal government in are not its jurisdiction and, quite frankly, none of its business unless the province allows it to make it its business. So this Constitution tries to deal with that, and national programs have had to try and deal with that. The way we are structured, health care is none of their business.

Ms. Stimpson: Yes, but you take the money, do you not, for it?

Mr. Harris: That is right. That is the power they have. Once you take the money, you accept the conditions. This is trying to deal with those powers.

Ms. Stimpson: I do not believe the provinces will necessarily follow the provisions that are set.

Mr. Harris: Do not get me wrong. I am not proposing that as a silly option. I am not sure you are not right. Maybe if we did not have provincial governments we might get rid of one whole level of bureaucracy, and it might be better. I am just asking you if that would take it to one extreme to guarantee that there would be no interference in what national objectives are.

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Ms. Stimpson: No, I am happy with that. I must admit I appreciated the Confederation which we had previously because I feel that we have had our country changed behind our backs. We did not have anything to say about it. It was done behind closed doors.

Mr. Harris: I understand that. I think we share that concern with you.

Ms. Popkey: In your question you are actually debating the system of federalism, because the provinces are regional areas that have been federated together to form a country and, next to Russia and China, this is as big as you get. There are always going to be problems with how to disperse the power and have an equality over such an expanse of land and numbers of people. So you are questioning federalism as a system. Your question is bringing that into it.

Mr. Harris: Yes. You see, when you give me the example that it is okay for provinces to top up basic programs, you accept that. But if you come from a province that has topped up a basic program and go to another province, all of a sudden, the basic from that province is not basic here. It is like dental care.

Ms. Popkey: Yes. I have an example. I have a degree from Ontario, and when I tried to go to university in British Columbia I managed to get my Bachelor of Arts in less than two years by going winter-summer, winter-summer, which they do not allow people to do. As you can see, they said I had to do third and fourth year. This is in the same country. I have to do undergraduate work when I am granted a degree from another province. That seems absurd.

Mr. Harris: But if we took education away from the provinces and gave it to the federal government, that would create a problem.

Ms. Popkey: No, no. I think there should be standards in these areas so that if you are moving from province to province, maybe you do want to license people in your public education system, each teacher, the federation of each province would like to license people, but not to recognize a degree from within your own country, when foreign students are recognized for their degrees coming from another country, that seems to me rather absurd.

Mr. Harris: I agree.

Ms. Popkey: It is those situations we are looking at.

Mr. Harris: I am not sure you would ever solve it unless you just get rid of the provincial governments.

Ms. Popkey: Or the University of British Columbia.

Mr. Chairman: I would like to thank you very much for coming this afternoon and presenting your brief to us and, as others have noted, for speaking very forcefully on the whole issue of federal involvement in a number of major social and educational programs, which are of particular interest to your organization. We thank you very much for that and for making your presentation.

If I could now call upon the representatives of B'nai Brith Women of

Canada. I believe the public affairs chairperson, Hannah Feldman, will introduce the members of the group. If you will please come to the front. If you need some more chairs perhaps Mr. Offer would be helpful in that regard.

Does everybody have a chair? We want to thank you very much for joining us this afternoon. I must apologize that we are running a bit behind but we got behind this morning so I am afraid we are going to be behind as we do through the afternoon. We all have a copy of your submission and I will simply turn the mike over to you. Please proceed as you wish, and we will follow up with questions upon the completion of your presentation.

B'NAI BRITH WOMEN OF CANADA

Mrs. Feldman: Thank you very much. First, I would like to present to you my fellow members of the B'nai Brith Women of Canada who have come here today. On the end is Ruth Rose, who is the president of B'nai Brith Women of Canada. Beside me is Enna Pearlston, who is Canadian public affairs chairman of the Toronto council, and my colleague in writing and presenting this position paper.

To my far right is Joan Rumack, who is the president of Toronto council for the B'nai Brith Women of Canada. Beside me is Penny Krowitz, who is our executive director of B'nai Brith Women of Canada. My name is Hannah Feldman. I am the national public affairs chairman for B'nai Brith Women of Canada.

Mr. Chairman: Welcome to you all.

Mrs. Feldman: Thank you very much. Good afternoon.

Mr. Chairman and members of the select committee, this preamble is not part of our formal presentation as it is an intensely personal explanation of what I am doing here today. This is terra incognita for me and it is a very difficult and taxing moment in my life.

In establishing my credentials before this committee, I would first like to share with you what I am not. I am not a lawyer. I am not a professor. I am not an expert on constitutional law. What I am, however, is infinitely more germane to the events transpiring here today. I am Canadian public affairs chairman of the national board of B'nai Brith Women of Canada. I am a dedicated volunteer belonging to this proud Canadian organization of many volunteers, and we have a keen interest in furthering, as far as it is within our collective abilities, the wellbeing of fellow Canadians.

I am also a business woman, a wife, a mother, a sister, a daughter, with all of the obligations and concerns that are inherent in these roles. I am a concerned Canadian citizen who has quite unaccountably discovered a surprising passion for the vision of how great this country could be and, in so doing, I now find myself presenting this position paper at this time and in this place.

The impression that the democratic process in this country is in peril reaches across all age groups, as is attested to by the fact that my colleague in the drafting of this brief is a young woman who is just as involved and concerned as I with the seeming erosion of our political process. Volunteers such as we, no matter what their titles, do not lightly devote working days, leisure hours and evenings to such an endeavour without being deeply committed on a personal level to bringing our concerns before you today.

There is a malaise in this country stemming from many sources, most

having to do with the style of government we see emerging with the introduction of this amendment to the Constitution. The perception of democracy in action is often as important as the reality and we, along with many other Canadians, are being told that our input in this matter is neither being sought nor, when offered, is it to be heeded.

I hope you will believe that our presence here today is not merely an intellectual exercise on our part, but stems from a sincere and deep-seated conviction that this is a necessary and proper response for citizens of this country to make regarding a piece of legislation which threatens to balkanize this country and paralyse us as a nation.

I would like to thank you for your attention. We are now privileged to present the position paper of B'nai Brith Women of Canada.

B'nai Brith Women of Canada position paper on the 1987 constitutional accord, presented to the Ontario select committee on constitutional reform, March 8, 1988. I will not read the table of contents. It is not necessary.

Introduction. B'nai Brith Women of Canada is a national volunteer organization representing 5,000 women across Canada.

B'nai Brith Women of Canada cares a great deal about the Constitution of Canada because, as the supreme law of our land, it supersedes all other laws and thereby regulates a multitude of aspects of our lives. As women make up more than half the population of our country, we have an enormous stake in the contents of the Constitution since it has the power to curtail or strengthen all the legislative rights we have gained over the years.

As a national women's organization, we of B'nai Brith Women of Canada feel that we have a responsibility to do our utmost to ensure that the provisions of the Constitution, as well as any amendments to it, are just and protect the interests of women.

Concerns of B'nai Brith Women of Canada. After much study and deliberation, we of B'nai Brith Women of Canada feel that there are five major areas of concern to us. These areas are: (a) our concern with the lack of clarity in the wording of the accord; (b) our specific worries in relation to the impact of the accord on the equality rights of women; (c) the accord's failings in the area of the federal spending power; (d) the amending formula; and (e) our disapproval of the process followed in reaching the accord.

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Lack of clarity: As the Constitution of Canada is the supreme law of our nation, we strongly believe that the rights it contains should be as clearly expressed and as well defined as possible. It is important that ordinary Canadians be able to make sense of the Constitution without the need of advanced legal expertise and that the rights protected in the Constitution have the same meaning for everyone. Otherwise, the real authors of our supreme law are not our elected leaders but the courts.

Unfortunately, the 1987 Constitutional Accord fails all of these tests. Its terminology in many sections, but especially in the area of federal spending power, is dangerously unclear and imprecise. The result is that the real decision-makers on those issues, many of which have a direct impact on our lives, will be courts, where women are drastically underrepresented and which have a long tradition of being insensitive to the needs of women.

B'nai Brith Women of Canada deplores the fact that so many parts of the constitutional accord are unclear and imprecise, and calls on all Canadian governments to develop clear laws that leave as little room as possible for interpretation by the courts.

Equality rights of women: As was mentioned by the other women's advocates who appeared before this committee, the equality rights of women as they now exist in the Canadian Charter of Rights and Freedoms are very new and were won through the huge efforts of thousands of Canadian women. The impact of these provisions is still largely unknown, since no case involving gender equality has yet been determined by the Supreme Court of Canada.

This uncertainty regarding gender equality rights in the charter makes it particularly crucial that no new provision adopted through the 1987 accord diminish women's rights in any way or even cast a doubt on their interpretation. The conclusion we have reached after a great deal of thought is that the present wording of section 16 of the accord does in fact put women's rights at risk. We feel that the only solution is to delete section 16 and add provisions so that the charter rights prevail over the Meech Lake accord.

Federal spending power: Our members are worried about the potential impact of the proposed addition of section 106A to the Constitution Act, 1867. The proposed addition is in there; I am not going to bore you by reading it again.

This proposed addition is of particular concern to B'nai Brith Women of Canada because of the importance to women of such shared-cost programs as the Canada assistance plan and health care financing under the established programs financing legislation. Women are disproportionately represented among the poor, who are now supported through welfare provisions of the Canada assistance plan. The current child care funding is also carried out through the Canada assistance plan, and proposals for new child care funding arrangements involve federal-provincial cost-sharing of grants to services. Women make up a large percentage of the workers in the health care system and will also be hit as consumers with any weakening of medicare.

We are concerned about the ambiguity surrounding a number of the terms which appear in the proposed amendment. Our major concern is with the term "national objectives." This has not been clearly defined and is being interpreted differently by different first ministers. We fear that no clear definition is being provided because there is no real agreement about what the term means. Here, as elsewhere in the constitutional accord, ambiguous wording appears to be the essential condition for provincial approval of the accord and is being used to gloss over a lack of genuine consensus.

In the absence of this consensus, the task of defining "national objectives" will end up in the courts without any clear guidelines from the elected branch of government. This will result in inequities in the vital services available to all of our citizens. Canadians have the right to the same level of services no matter where they live.

Mrs. Rose: The accord changes the future amendment procedure by requiring unanimous consent of all provinces to changes to significant national institutions, such as the Senate, the Supreme Court and the establishment of new provinces. With the provinces gaining such extensive veto powers, their bargaining leverage is increased in virtually any area of federal-provincial negotiations, opening the door to many future deadlocks.

Obtaining unanimous approval is highly unlikely, and therefore change in any area becomes improbable. The only acceptable amending formula is the return to the amending formula in the current Constitution, 1982, this being consent of seven provinces accounting for 50 per cent of the national population.

The process: Prime Minister Mulroney assured Canadians that the democratic process would be respected and that the public would have the opportunity to be consulted before the coming into force of the Meech Lake accord. His statement certainly seemed to imply that amendments could be made to the accord if such was the will of the people. Before long, however, it became clear that the Prime Minister and all the premiers had committed themselves to ratifying the accord without any modifications.

B'nai Brith Women of Canada questions the validity of a purportedly democratic process which on one hand invites public consultation and on the other hand denies the possibility of amendments to the Meech Lake accord. You, the select committee, are empowered to make recommendations to the Ontario Legislature. We urge you to recommend amendments to the accord before it is ratified.

In conclusion, the members of B'nai Brith Women of Canada strongly recommend that the government of Ontario fully support our contention that amendments must be made to the Meech Lake constitutional accord to ensure that these constitutional changes are acceptable to and equitable for all present and future Canadians.

I would like to make a personal statement in addition to our formal presentation. As my colleague stated, we are not lawyers or constitutional experts or professors. I am a private citizen and, because of my involvement with B'nai Brith Women of Canada, I was invited to attend several meetings of women's organizations who were joined together in the task of showing the government that we will not stand still and accept the inequities that ratification of the Meech Lake accord will make to our lives and the lives of all Canadians.

My involvement began on October 18, the anniversary of Persons Day, when women were recognized as being equal to men, at least as far as their enfranchisement to vote in Canadian elections was concerned. Since that time, women have fought long and hard to ensure that our rights were guaranteed, and in 1982, with the Charter of Rights, we felt that this battle had ended.

We were wrong. Prime Minister Mulroney and the 10 first ministers have shown, with their undemocratically worded and presented Meech Lake accord, that the equality rights of women are again at risk. I am here today, on March 8, International Women's Day, to say to Prime Minister Mulroney and to all of the first ministers that my equality rights will no longer be guaranteed should the Meech Lake accord be ratified unchanged and become part of the Constitution of Canada, and I say no to this. I will not just sit still and allow this to happen.

Once again I urge you, the select committee, to ensure that our recommendations for amendments to the Meech Lake accord become your recommendations to the Ontario Legislature. Join us in the fight to preserve the Canada we know, where all enjoy the same rights and freedoms.

Mr. Chairman: Thank you very much for your presentation and, as well, for the two more personal statements and for the feeling that was contained within them. Certainly the presentation is clear and succinct and

your recommendations are very straightforward.

With that, we will begin the questioning with Mr. Harris.

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Mr. Harris: I thought your preamble was suggesting that it is so clear there is no need for any questions, but I will--

Mrs. Feldman: That would have been nice, but OK.

Mr. Chairman: Life is somehow never that simple.

Mrs. Feldman: No, it is never that simple.

Mr. Harris: Let me say that as a nonprofessor, nonconstitutional expert, nonlawyer I share your concern on clarity, on equality rights, on the amending formula and on the process. I think a number have expressed concerns in many of those areas and I want to tell you that I share those with you.

I want to ask you just briefly about page 6. The bold statement is that "Canadians have the right to the same level of services no matter where they live." What services do we as Canadians have the right to that will be the same no matter where we live?

Mrs. Rose: All right. What we are concerned about are the shared-cost programs. If the Meech Lake accord goes through as it is written without amendment, with the provinces being allowed the option to opt out of shared-cost programs, programs such as universal medicare, child care, welfare, disability pensions, workers' compensation, skills training, those types of programs will not be offered at the same level from province to province.

We feel that a worker who is injured on the job in Nova Scotia and a worker who is injured on the job in Manitoba must have the same degree of compensation and assistance. It should not matter. We are worried that if the provinces can opt out, that will not happen.

Mr. Harris: I raise this because the last presenters, I think, raised it too. We are hearing more and more about the rights of Canadians, regardless of where they live, to expect something basic. Of course what is basic keeps being added to each year. What was basic 10 years ago is not basic any more and it keeps getting added on to.

Also, all these areas traditionally have been under provincial jurisdiction, like the Workers' Compensation Board, and I hear you saying that really should be a federal responsibility. We want a federal standard. We want them setting the national objectives in health care and education, so you can transfer back and forth.

I will ask you the same question I asked the last group. If all the provinces are going to do--and do not get me wrong. I am concerned about federal powers in Meech Lake and in former compromises that have been made--but I sense from a number of presenters a view that all the provinces should be doing is delivering the services that the federal government tells us, "This is what you are going to do in the name of equality across the country."

Mrs. Feldman: No. I think what we are trying to say is that we feel there should at least be set by the federal government a minimum standard. If a province is lucky enough to have the funds and wishes to enhance a program, that is splendid. Why not?

Mr. Harris: Why should Canadians who live in a province that happens to be rich--oil prices are up high or nickel prices are up high--get the advantage of this enhanced service and not Canadians in other areas of the country?

Mrs. Feldman: Now you are discussing the way things should be ideally in the perfect way. The way things have been working up to now has not been that bad. What we are concerned about now is that a province could take the funds for child care and decide, rather than funding child care centres, to use those funds because the national objectives are not delineated anywhere.

There is no delineation of what a national objective is. If you do not have a delineation of what it is, how can you opt in, opt out or make your own arrangements? You do not have a base to start from. What we are probably saying is there should at least be federal minimum standards set in each area, and the province should not just be able to say: "We are going to do something about child care. Give us the funds and we will work something out. Don't worry."

Mr. Harris: I am not saying I agree with them but I have heard people say: "I agree with you in your interpretation of Meech Lake. That is why I like it, because it keeps the feds and their noses out of the provincial business, if it is none of their business."

Mrs. Rose: I think there has to be a balance of power between the federal government and the provincial government.

Mr. Harris: But I sense from you a view that the federal government should involve itself in setting national standards in far more areas of provincial jurisdiction than it does now. Would that be a fair statement?

Mrs. Rose: That is not exactly what we are saying. It is just that there have to be some basic standards set.

In addition, if I could just go back to something you said earlier, that the ones we have listed are traditionally provincially administered programs, but--

Mr. Harris: But they are areas of responsibility. In other words, it is the province that is to deliver.

Mrs. Rose: If you try to think to the future of things that are not even covered now, for example, the environment, whose area of responsibility should that be? In the case of a train carrying toxic chemicals going across the railway system, if the provincial governments can decide their own way on this and there is no national standard, is the train going to be stopped at the border between Ontario and Manitoba by Manitoba saying, "No, you cannot go through here," but the next province over saying: "Sure, we will take it. Airlift it over somehow"? It does not make sense. There are concerns that are not even done yet.

Mr. Harris: But all the arguments have been made. It makes logical sense again. Let us do away with these silly provinces that set up standards

that are not uniform and everybody is exactly equal all across this country. Anyway, we will not solve that today.

Mrs. Feldman: I do not think so.

Mr. Chairman: Mr. Allen, who will solve this problem.

Mr. Allen: As you talked with regard to questions of level of services and with regard to broad principles of equality across the regions of the country, I was reminded that ever since the great inquest into Confederation at the time of the late years of the Depression, the Rowell-Sirois royal commission, and as we moved into the world of transfer payments, equalization payments and so on, we initiated a period in our history in which now for 40-plus years we at least have had operative in some sense the notion that all Canadians have a right to equivalent services without the burden of unequal taxation. I think it is important for us to bear in mind that we have had those decades there, which established that principle even though we have not always lived up to the principle very fully.

When we begin to look at new formulations of federal-provincial relations, like the spending powers clause in the Meech Lake accord, it just ran into my mind that one could paraphrase Lord Watson's famous comment when he said, "The ship of state, as it sails on, none the less maintains its watertight compartments," to read, "As the ship of state sails on, it does not jettison as it goes the contents of the hold."

There is somehow a kind of history of a certain stability built into our practices, which makes it unlikely that the kind of example that you gave to us of an absolute standoff between a province and the federal government with regard to transportation of certain goods would in fact take place to move it into yet another domain in the Constitution.

You and several other groups have raised the question of clarity. When we went through the matter of language with some of the constitutional experts who came before us and some of the professors who were there, I am not sure that we resolved the question, but there was at least some discussion of whether crystal clarity was either always possible or necessary or even wise.

I would just ask you whether it is worth thinking about for a few minutes that it might be more difficult to field national shared-cost programs if the language were too clear or if we strove for too great a clarity of language, simply because it would be so difficult to get anything in place that you would never get anything started. If there is a certain amount of ambiguity there, it gives you some sort of room to play around in. Everybody can think he is getting a part of the ball game, getting into the game. At the end of the day you might end up with a program and have more than you had before you started. Is there anything, from your point of view, worth thinking about at that level when it comes to clarity and ambiguity in this business of framing constitutions?

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Mrs. Feldman: I just feel that once you put something down, it is sort of like the Charter of Rights. Before we had it, there was a lot of movement. There was a certain amount of freedom for different interpretations. Once you carve it in stone, so to speak, it becomes a solid piece of legislation and the interpretation is just an interpretation of whoever

happens to--you can play with the words a little bit. It is the same as an invitation. If you are not included in, then you assume you are included out.

Mr. Allen: Yes.

Mrs. Feldman: If it says "family," that means everybody. If it says "Mr. and Mrs." or just "Mrs.," then you take it to be understood that the other parties are not included. Right?

That is the problem here. You have taken something that appears to be starting to work and you are introducing something else before we have had a chance to have the Charter of Rights put into play. I think clarity in this case might be--if it is ambiguous because they chose to make it ambiguous because they did not want a lot of aggravation about questions on very specific wording, that was the choice of the people who drew it up. But if it is ambiguous because they really do not know or maybe do not want to know what it actually means or could lead to, then I think it is a little bit dangerous.

Do not forget that the first ministers you have there now who signed this accord will not always be there. There will be other first ministers who may not have a clue what was in the minds of these people who drafted this because there are so many cloudy areas. What are you going to do at that point? Redraft it? I think there are too many.

Mr. Allen: The point that has sometimes been made is that as you move into that next generation or two which may not have known the context, none the less, unless you have been terribly precise, it provides that generation with an option of moving in its own direction to fulfil its own objectives, without having been tied down to the sort of explicit standards that may have satisfied one age but do not satisfy another.

Mrs. Feldman: Point well taken.

Mr. Allen: I am raising the question just to further a little bit of thinking on the process because this is a very difficult question for us all to try to come to grips with and to settle in a very conclusive way. Our committee has been working it over now for several weeks and I do not think we have come to a single mind yet about that kind of question as to how much you want to tie it all down.

An example that was given to us this morning, I believe, was the phrase "peace, order and good government." We all think we know what that means now and I think John A. Macdonald thought he knew what it meant, but in the intervening years, there was an awful lot of debate as to what it really did mean and who it gave how many powers to and why.

Miss Roberts: If I might go on from that point, I appreciated your brief on several of the points that are of concern to us all. The lack of clarity in the wording, I think, is something that can be pointed out. As you are aware and have indicated, with the charter itself it has not yet been determined just exactly what certain equality rights are.

I would like to point out to you that sections 8 says, "Everyone has the right to be secure against unreasonable search or seizure." It seems very straightforward. There have been more cases in the Supreme Court of Canada with respect to that one than you would ever care to think about and there will continue to be more cases with respect to that. So just because something is clear or precise does not necessarily mean that in certain situations we

are not going to be trying to fine-tune exactly what that means. I think those are concerns we all have with respect to how clear and how straightforward, going on from what Mr. Allen has said.

I think it is important that your concerns about the equality be addressed. We have a problem in that we still do not know what the charter says. That is the basic problem. You may not like what the charter says. Therefore, I do not know if I want the charter to overrule what is in the accord if you think the accord overrules the charter or vice versa. We are looking at two basic documents, one which is in existence that has not been interpreted by the courts in certain areas and one that we are all trying to interpret.

Your comments with respect to the equality of women: I assume you think you could fix it all if you just deleted section 16 and said the charter supercedes the accord or supercedes the Constitution. Which one?

Mrs. Feldman: I think we agree it should supercede the accord. We feel it took so long to get the provisions in the charter that we would not like to see anything supercede those provisions. This uncertainty is very--we are just uneasy with it. We feel it took so many years to get that equality rights section into the Constitution. That happened only in 1982. As you said, we have not had a chance yet to see how it is working. We do not like to see another document come along that looks as if it may be diminishing what was guaranteed in the 1982 Charter of Rights.

It is so uncertain. It is the same thing I said before. If you are not in, does that mean you are out? If you are not specifically mentioned, does that mean you are not specifically protected? I do not know. This is the problem.

Miss Roberts: The problem that has been stated to us, if I might comment very briefly, is that the accord changes the Constitution Act, 1867, and puts in the "distinct society" clause which is something everyone is concerned about. Well, it changes and amends the Constitution with respect to that. It does not amend the charter with respect to that. Therefore, you have to consider the documents together as to what is going to happen once the Constitution is amended with respect to the "distinct society" clause and what happens with respect to the charter. Those are two things I would like you to think about that we have to come to grips with. I point out to you that just saying the charter supercedes the accord or something like that, I am not so sure will do what you expect it will do.

Mr. Breaugh: Just a couple of quick ones: I think you are aware that the Prime Minister of the country, to quote from a Globe and Mail story, I think this morning, says: "Everybody has endorsed it. Those who want to oppose it, let them do it, they'll have to answer for it at the proper time." I am feeling very threatened by Brian today.

Mrs. Feldman: I read that too. I was really disappointed.

Mr. Breaugh: Even the Premier of Ontario (Mr. Peterson) seems to be threatening me too. This is kind of heavy duty political power at me here. I tend to agree you have focused on a section that a lot of people have at least questioned, and some have even gone so far as to challenge before the Supreme Court of Canada: What is the impact on the Charter of Rights by this accord?

You recommend one option which is to simply delete that section of the

accord and let the charter stand by itself. Others have advocated that maybe we could join in the reference concept, that we will refer that section to the Supreme Court and get a court decision which determines, did Mulroney slip into honesty here and actually find out whether the accord does or does not have any impact on the charter?

There does seem to be an outstanding question for a lot of people. We need to clearly establish what that relationship is. Is the Charter of Rights and Freedoms supreme to this agreement? Does this agreement have an impact on it? Do you really care which way this is done, deletion, court referral, amendment? Is there a serious preference there for any mechanism? Are you searching for any mechanism which clearly establishes what is going on here?

Mrs. Rose: Myself, I am afraid of a Supreme Court referral for a ruling there. They are not accountable.

Mr. Breaugh: Excuse me. The problem we are struggling with is that no matter what we do as politicians, it will always in the end be subject to the decision of the court, so the argument is, let us get that court decision as quickly as we can so at least we know what we are dealing with.

Mrs. Feldman: I really am not an expert in this kind of thing.

Mr. Breaugh: You are in a room full of people with the same qualifications. Do not worry.

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Mrs. Feldman: Wonderful. I have a feeling that I would not personally have a strong objection to whichever mechanism was used as long as it was recognized that this is a very serious flaw. We are uneasy with the way it was done. We are very uneasy with the attitude, and this scares me, I do not mind telling you. I do not like to see this kind of statement being made. I know it may just be political rhetoric and I am not naïve enough to think that a lot discussion is not going on behind closed doors. But even to be able to feel free to come out and make a statement like that is really worrying to me.

I was really sincere when I said I do not like and I am uneasy with the direction the government of the country is going. There is a certain element of high-handedness that really makes me nervous about our country. It is a wonderful country. I think it is probably the best country in the world today to live in and it could be even better.

I have a family I hope will be growing up and continuing to grow in this country. I would like to feel that there is a certain openness to our government. I do not care about the mechanism personally. I just care that it be there and it be recognized. I do not understand what the panic is about getting this thing ratified in the first place. According to everything we read, studied and were told, I think 1990 or something is the deadline. If there is something wrong with this, if people feel uneasy with it, if people do not feel they are being properly handled or treated, I do not understand why some mechanism could not be found, and there is a lot of time to do it.

Let us do it right. It is so much harder when something is done, ratified and passed to go back and change it. We have all the time in the world now to take counsel, to talk to each other and to talk to government and

for governments to speak with us, not at us. Let us fix these things that are causing so much unease.

I do not care about the mechanism because I do not understand enough about it to know which mechanism is better. There are people better qualified. I would not have any problem, as long as I knew somebody somewhere was thinking about it in the manner you suggest and thinking really serious thoughts about doing something about this. I do not have any objections because I do not know that I have to have any.

Mrs. Rose: The point is to make the change now before it is ratified, because once it is ratified with the change in the amending formula that is included in the accord, it will be almost impossible to change it then. So take the time now, make the amendments and change it now.

Mr. Breaugh: I am afraid you have a better understanding of the word "democracy" than Mr. Mulroney does.

There is one other quick point I want to chat a little bit about because I notice a number of groups have talked about the federal government setting standards or objectives or playing with those words.

I will tell you quite frankly the concern I have is that I do not share what seems to be a growing belief the federal government is better at doing this than other levels of government. I am reminded that the poorest province in the country initiated medicare, Saskatchewan, and that it took considerable bullying to get the federal government to come on side with that. At this point in time, I am not sure I want the federal government of Canada to do anything but dissolve itself and call an election. I do not share your abiding faith in the federal government. I believe there are provincial governments that could do a better job at that.

My preference would be to straighten out the matter of the Charter of Rights; I give that priority. If I did that, then it seems to me that a woman who wanted child care in Newfoundland would have some access to a court process that would allow that person and that child to have equal rights with the child in Ontario. I am more concerned about that than I am about getting into the game about setting standards, because the truth is that the standards for education, hospital care and transportation in this city are a hell of a lot different than they are in Kapuskasing. We all live with that reality.

I do not really want to play that game. What I am interested in is the larger question of do I have equal rights as a Canadian from one end of the country to the other, do those charter provisions stand up and is that clear? If I can get that rectified one way or the other, we will have these discussions about objectives and standards and all of that at conferences from one end of the country to the other.

Mrs. Feldman: I can live with that.

Mr. Breaugh: OK, thank you. I want this guy Mulroney put out of business.

Mr. Chairman: I think we should all in this room say to Mr. Breaugh that if at any moment he is under attack by either Prime Minister Mulroney or Premier Peterson, then we will indeed all come to his defence.

Mr. Breaugh: How well?

Mr. Chairman: A final word from Mr. Elliot.

Mr. Elliot: I just sent a note to the chairman requesting the privilege of being able to thank you and I apologize at the same time for not having some more time. There are about 10 questions I would like to ask of the group, but because we have a couple of other presentations this afternoon, we really have to wind it up. It is obvious that your brief was very thorough and well prepared. It gives us a lot of cause for thought and it substantiated a lot of the other presentations we have already heard. I would like to thank you very much for taking the time to come.

Mrs. Feldman: Thank you and thank you very much for your attention.

Mr. Chairman: I now call upon the representatives of the Brantford Ethnoculturefest, Ria Marie Jenkins, the acting executive director and Vince Bucci, if I pronounce that correctly, the president.

Mr. Bucci: Close enough.

Mr. Chairman: We want to thank you very much for joining us this afternoon. I apologize, as I did earlier, for increasingly running behind time. I think we have felt all along with this issue that it is terribly important to be able to hear the views of those who have come before us and to make sure we can get on the record the concerns and issues that you wish to raise. The fact we are starting late in no way means that we are going to alter your time frame. We all now have a copy of your presentation. If you would like to proceed with that, then we will follow up with questions, as we have with the other witnesses.

BRANTFORD ETHNOCULTUREFEST

Mr. Bucci: Before I proceed with the actual brief, I would like to commend the committee for having these meetings, however much of a charade it is, if Mr. Peterson's comments in the Globe and Mail today are legitimate. If truly the government wanted input, I suggest that this committee should give an opportunity for a lot of working people to make presentations. It is very difficult for people from Brantford, working people, to take a day off, as I had to do, in order to come and make a presentation. The rest of our executive was not able to make those kinds of arrangements. It was certainly not a lack of interest on their part.

I suggest to you that the interest is much greater than perhaps it would appear from even the number of people who have taken the time to come to Toronto to make presentations. We believe this is a very serious situation and that is why we have taken the time and the day off to come before you to present our position.

The Brantford Ethnoculturefest is a multicultural social service agency operated by a nonprofit charitable corporation and is an umbrella organization representing 25 ethnocultural groups in the Brant county area. It has its roots in the Brantford Multicultural and Citizenship Council of the 1950s, growing with folkloric community involvement to the highly successful International Villages Festival when it began in 1974.

Since a 1982 amalgamation, Ethnoculturefest has focused its efforts to encourage the recognition of the diverse heritage of all Canadians, thereby enhancing respect for ourselves as individuals, as members of families and of

ethnocultural communities. As our services have evolved in response to the community, our mandate and, thus, our programming has been developed to fulfil three basic roles in the community.

As a unique social service agency, we address the culturally specific needs of our new Canadians and ethnocultural clients in their adaptation to Canadian lifestyle.

As a community educator, we facilitate respect and understanding through our promotion of positive intercultural and cross-cultural communications amongst our ethnocultural groups and the mainstream population.

As the co-ordinating agency for folkloric celebrations, such as the annual International Villages Festival, we promote and foster a sharing of our cultural heritage.

The Canadian and Brantford population, with the exception of our native people, is comprised totally of immigrants. It is appropriate, therefore, to have an image of our community as composed of a flow of people entering the country and gradually becoming a cohesive element of the mainstream, effecting a positive and constant transformation of our municipality. The concept of multiculturalism, thus, comes alive in our community. Our services, institutions and government must be responsive to the people we all serve.

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It is, therefore, quite appropriate that Brantford Ethnoculturefest submits this brief in response to the constitutional accord reached at the first ministers' conference on April 28, 1987, at Meech Lake, Quebec. We recognize within the text of the agreement some dangerous subtleties and outright directives whose ramifications are counterproductive to the important nation-building successive governments have undertaken.

We recognize that others will be addressing concerns relating to the broader applications in their submissions to the select committee on constitutional reform. Consequently, this brief is limited to those issues and concerns of the ethnocultural segment of the population.

Of tantamount importance to Canada is the preservation of the multicultural society afforded by our social, human rights and immigration policies. Legislators must treat their responsibility in this area seriously, as it is an imperative, not an option. Otherwise, the kudos that hailed the Charter of Rights and Freedoms as part of the Constitution Act will soon turn to condemnation of it as a charter of wrongs. We believe that the much belaboured wording of the document before us, The Constitutional Amendment, 1987, fails to protect the rights of cultural minorities from erosion.

With the pronouncement of Quebec as a distinct society within Canada and the separate designation of French- and English-speaking Canada, lines are drawn delineating a black-and-white silhouette of our nation. Gone is the multicultural mosaic, which has been an ever-increasing reality, even long before the federal government's inception of an official multicultural policy in October 1971. No collective of participants at a first ministers' conference has been empowered to derogate the multicultural rights guaranteed in the Charter of Rights. Yet we see in the Meech Lake accord only token recognition of the multicultural nature of the country, including Quebec's population.

We would point to the timing of the deliberations on multiculturalism to demonstrate the low priority placed on it as a component of such an important document. The entrenchment of multiculturalism in the Constitution was on the table around 2 a.m. Prime Minister Brian Mulroney called a coffee break for 15 minutes, and by 2:30 a.m. multiculturalism had the premiers' approval, with the final vote concluded at 4:30 a.m. Is this cursory treatment of a cornerstone of our national policy appropriate 16 and a half hours into the lengthy path towards an historical landmark? We think not.

Clearly, Premier Bourassa objected to anything that would dilute the special status sought for the francophones in Quebec. However, to use basic rights as a political pawn to win Quebec's hand in the constitutional marriage is a high dowry to seek of the rest of Canada. As a result, the Charter of Rights is no longer entrenched in the Constitution, as citizenship is no longer founded on a set of commonly shared values.

This is shown in section 16 of the schedule to The Constitution Amendment, 1987, intimating that, while the recognition of Canada's duality and Quebec's distinctiveness does not abrogate the charter's provisions on multicultural and aboriginal rights, the remaining freedoms of speech, association and religion, equality, mobility and minority-language education rights are not protected. The retention of one's culture is meaningless without the latter safeguards. The intent of the Meech Lake accord can be interpreted as basic rights may vary or be restricted depending on the province in which we live, the language we speak or the membership in privileged groups.

We object to the first ministers' appeasement of politically significant groups rather than the conscious entrenchment of a collectivist vision. Labelling in order to assert rights is a divisive, not a unifying course. Sadly, we see in the words of the crafters of this piece a mindset which belies any lipservice paid to protecting multiculturalism under section 16 of the accord.

Reed Scowen, parliamentary assistant to Premier Boursassa, wrote in a Southam News article that in the accord's unanimity was seen "a deepening understanding of the way in which two great cultures can live together in the same political space for the enrichment of everyone." Two great cultures do not a multicultural nation make, nor is that the Canadian experience. If this province endorses the amendment as it stands, our fears persist that one could use the "distinct society" clause to discriminate against minorities with legislation like Quebec's Bill 101.

Inherent in the maintenance of our multicultural society and an imperative for population levels is a progressive immigration policy. Canada's record in the international arena has been stellar in terms of human rights and social initiatives. It would be tragic then to undertake regressive measures, cited in the amendment, that promote disparity in the treatment of newcomers to our country. The federal government can be directed to withdraw services, except citizenship services, for reception and integration, including linguistic and cultural, of all foreign nationals wishing to settle in Quebec where said services are to be provided by Quebec, as funded federally.

With this also a possibility for other provinces, the potential abuses are horrifying. At Premier Bourassa's insistence, not even the programming standards or criteria, only the general objectives, can be expected of the provincial service delivery. The already existent regional disparity wreaks havoc with the provision of similar services through individual provincial

mechanisms. To further remove immigration from the federal purview, especially with the uncertainty of free trade effects impending in the near future, is to ignore the reality of market fluctuations on regional economies and social programming. As health and education services display such marked differences across the country, how could the uniformity of immigration programs ever be conceived?

According Quebec a formal voice in the immigration policy flies in the face of the entrenched freedom of mobility which may be suspended to further Quebec's language-bolstering mission. If it is required that a newcomer go first to Quebec because of French-speaking abilities and then is allowed to proceed to an original province of choice, this is an obstructive extra step which furthers neither Quebec's apparent vision nor Canada's humanitarian policies towards landed immigrants.

While the decade-old Cullen-Couture treaty was hailed as a panacea for maintaining Quebec's French-speaking majority, it serves only that province's purpose and is oblivious to the greater stress of the uprooting immigration process that necessitate a social support system and appropriate reception and assistance in integration. As this does not appear to be a concern of the first ministers in this amendment, we cannot support the document.

Our next point of contention is one which should be of concern to all citizens who entrust their legislators to enact laws for the overall good. How could political representatives endorse a Constitution which can exempt laws from the application of the Charter of Rights and Freedoms in some cases? By allowing the overriding clause of the charter to stand, the first ministers have left the door open for suspension of guaranteed rights in extraordinary cases. This "notwithstanding" section of the act, which allows Parliament or any provincial government to overrule 10 sections of the charter, was included in the charter as an escape hatch from impractical court decisions based on the loose drafting of the charter. It was irresponsible of the first ministers tacitly to condone this potential breach by not moving to delete the "notwithstanding" section.

Finally, we must join our voice with that of the Canadian Ethnocultural Council in that its request for a guarantee of minority ethnic group representation on the Supreme Court was ignored in the amended text. This is an area about which our organization feels quite strongly. By presenting a brief to the standing committee on procedural affairs and agencies, boards and commissions on January 30, 1986, we argued for the need for appointments to government's voluntary committees to be more reflective of ethnocultural population base. This is an area in which it is incumbent upon the legislators to display leadership in acknowledging the demographic reality and ensuring that the mechanism for choosing senators will, by guarantee of our Constitution, reflect the populace.

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In conclusion, we will comment on the significance of the process preceding ratification of this amendment to our Constitution. On joining their pens in signing the accord, the Prime Minister and the premiers gave their assurance that the pivotal Charter of Rights and Freedoms would be unchanged. Yet each of these first ministers has gone back to his province and given a different interpretation of the text. By their own admissions, only a court's interpretation would ensure shore-to-shore uniformity. In addition, Eugene Forsey, Michael Bliss, Michael Pitfield, Pierre Trudeau and other constitutional and historical authorities refute the stated sanctity of the

charter, predicting the accord's wording as exposing our guaranteed rights to widespread breaches.

As there are clearly well-articulated dissenting views on either side of this issue, it is imperative that the endorsement of the amendment as circulated not be a fait accompli. With the text bearing the approval of provincial signatories, it appears unlikely that amendments would be entertained, sadly rendering the valuable work of this constitutional select committee as costly window-dressing. This would be a miscarriage of justice.

Rather, in elevating above rhetoric the Premier's election promise to elicit constituents' input, the government should seek a ruling from the Supreme Court. Thus we will be assured that our legislators are truly convinced of the validity of multiculturalism and of the Charter of Rights as its cornerstone.

While Ontario has shown individual initiative in its recently announced government-wide multiculturalism strategy, the Meech Lake constitutional amendment does nothing to further the national cause of multiculturalism, but rather is regressive. In following on the precedent established in resolving the separate school funding issue, the only responsible option of this government is to subject this amendment to the legal process to guarantee its citizens their rights.

We would like to express our appreciation to the select committee on constitutional reform for its careful consideration of the issues outlined in our brief. We wish you much success in your deliberations.

Mr. Chairman: Thank you very much. One of the things you have brought forward in your brief is that I think this is the first time we have had some inkling of exactly what was going on at two o'clock in the morning or at any other time. I suppose this is one of the areas where one wonders, as the hours of the night pass, just who is saying what to whom and how many cups of coffee are being taken.

I want to thank you for the brief. You have raised a number of specific issues in particular areas that speak to the whole multicultural area, and I think it is useful for us to focus on some of those. We will begin the questioning with Mr. Eves.

Mr. Eves: You have made several points in your brief, and we want to thank you for the thought and the time you have put into your brief and for coming here today. I think it is very important that the committee hear viewpoints from all across the province. The committee was in London a week ago last Thursday, about 10 days ago, as you may or may not be aware.

You have raised the point of section 16 and charter rights and whether they will be overridden or not, and that is a point that many groups have made before this committee. You also expressed concern about the "distinct society" clause, the immigration clause and the Supreme Court clause, to name a few. I guess what I really want to get to is what action you are proposing this committee take.

You indicate that a court reference may be in order, but I do not see how a court reference is going to solve, for example, the immigration clause concern you have or the Supreme Court clause concern that you have. Are you recommending a court reference as the answer to all our problems or do you think that specific amendments are needed? Or, in fact, are you going farther

than and saying that maybe we should going back to the drawing board and start all over?

Mr. Bucci: Ideally, it would be our recommendation to go back to the drawing board. I think, in a sense of frustration, we indicated that to you right at the beginning, but it would be totally naïve of us to think that would ever happen.

The position we are taking is, given that the Premier (Mr. Peterson) has stated that he is going to proceed and approve the accord in the spring, and seeing that this, in our view, is a very divisive issue within our province, particularly within the multicultural group and I am sure for women in general and in numerous other situations--in our view, it is as divisive as the separate school question, that situation when the government opted out to get an actual ruling--if, in fact, the Premier's and the Prime Minister's position is legitimate, i.e., that the charter will be supreme, then let the courts say that before they proceed. That would be the first thing we would want.

The second thing would be to make recommendations that if, in fact, the provinces are going to have a say as to the candidates for the Supreme Court, then perhaps there should be an agreement among the premiers that the individuals who are nominated to the Supreme Court somehow should reflect the demographic analysis of Canada.

Mr. Eves: Thank you.

Mr. Chairman: Mr. Allen.

Mr. Allen: Thank you, Mr. Chairman. If other people want to get in on the questioning here--I hear they are sensitive about the fact that I have been jumping in quite frequently today.

Miss Roberts: Do not worry. I will jump right in after you.

Mr. Allen: OK. That is fine. I thought perhaps some other hands had gone up.

The question that I want to address to you has to do more with the general question of where you are coming from with regard to the Meech Lake accord in big terms rather than getting into some of the more precise things about immigration clauses and whatever that you referred to. There are one or two questions I have there but I will let them go for the moment.

I will preface this by saying, to put it charitably and without trying to read too much into what was or was not going on in smoke-filled rooms in private conversations at Meech Lake, my sense is that what the premiers got together to try to do was to deal with the Quebec round and that some things had been left out of the 1982 settlement so far as it went. Spending powers had not been included; immigration had not been included. There was the whole problem, of course, of Quebec and whether Quebec retained a veto or did not retain a veto and what powers pertained to that province in the new arrangement of 1982.

Sooner or later, they had to come back to that question, so they asked themselves in the light of all the discussion that has gone on in this country about the place of Quebec in Confederation, how do we describe the relationship of Quebec to the rest of the country in terms of official languages?

They had a very neat and concise description, which is about as close as anyone has come to describing, I guess, the way of the land with regard to the languages in which people function in Canada and that one province tends to be the homeland of one of those languages and the other provinces tend to have the English language as a sort of lingua franca or common currency of their daily affairs, so each has its own minority within it.

When they talked about Quebec in relationship to the rest of the country, they described it as a society. Nowhere apart from section 16, unless I have missed something, is the word "culture" used and nowhere outside that is there any reference or attempt to wrestle with the place of languages that are not official languages.

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I sense, therefore, that what is being addressed is two broad societies, both of which are manifestly and irreversibly multicultural; both of which have other language groups within them that are interested in pursuing and maintaining their language and certain aspects of their life, but who do not have, and to the best of my knowledge do not pretend to ask that any of those languages become the common language of whole provinces or of our general public discussion in the country even though they might be used from time to time and should be, in my view.

In the light of that, is that your understanding of what they were trying to do and what the result was? If it is, then there does remain an outstanding task, it seems to me, which is to go back to the question in some considerable detail as to what we really do mean by being multicultural both in Quebec and the rest of the country.

In so far as multicultural rights were established in the charter and in the other constitutional framework that we have got, you managed to get it back. The multicultural community managed to get it back in section 16 and in the amendments that were placed in the immigration section, which provided that the charter would apply in all respects to all decisions made with respect to immigration. That preserves mobility rights, of course, and other matters.

I have difficulty, if I understand it that way, concluding that the multicultural community lost anything. It might have gained things if Meech Lake had been construed in broader terms and if they tackled bigger agendas and if they had done this and if they had done that, they might have strengthened it. I am having difficulty, quite honestly, understanding where something was lost, yet you seem to be telling me that. Can you help me?

Mr. Bucci: OK. I think that, if in fact, the charter becomes secondary, the section on individual rights and collective rights--and those are the two components--and I believe they came into effect last April or so--are the components the multicultural groups will use in order to ensure equality. If our interpretation is legitimate that the charter becomes secondary and those clauses are no longer valid, then multicultural groups will lose out what we have gained at this point in time.

Mr. Allen: If I could just press you for a minute. The charter is obviously supreme over the immigration section--Right?--and the multicultural rights, as they existed in the charter are reaffirmed. Nothing in the Meech Lake accord as stated in section 16 is to reduce or derogate from those multicultural rights in the charter.

If that is true, then how much further--I am not talking about women or other groups; there may be an argument there--from the point of view of multicultural groups what more can be gained specifically in any amendment or change to the charter other than going on to the big agenda, which I think does need still to be worked out in some detail in this country as to what multicultural rights mean in the longer run, given all the sort of substratum of Canadian life--the English, French and the rest of it?

Mr. Bucci: Mr. Allen, if I understand you correctly, there seems to be a gap in terms of communication here. I think what we are trying to present is that those two clauses, the individual and collective rights, are things that we feel protect multiculturalism and we do not need to go beyond that point. We are satisfied. But we want to make sure that the charter is supreme, and we think the Meech Lake accord does not address that.

It seems to me and to a lot of experts that perhaps the clauses that we have referred in the Meech Lake accord will make the charter secondary. If that is the case, then collective groups--if it is an Italian group or a Muslim association or whatever--will end up losing certain fundamental rights that we now have, because of the "distinct society" clause.

Mr. Allen: If you went to the Supreme Court and the Supreme Court said, "Yes, the charter is secondary to Meech Lake," then you would be in trouble.

Mr. Bucci: That is right.

Mr. Allen: But that has not happened yet.

Mr. Bucci: That is why we are asking you to go to the courts before you pass it.

Mr. Allen: But you see, I am just asking you specifically from the points of view of the groups that you represent, the multicultural community.

Mr. Bucci: Right.

Mr. Allen: You have, in fact, got the supremacy of the charter built in.

Mr. Bucci: Right now.

Mr. Allen: To the immigration section and the section 16.

Mr. Bucci: Right.

Mr. Allen: And I am asking you if there is any other aspect of that agreement that gives you trouble, where you think that somehow the multicultural community has in fact lost something. I am not quite sure what that is. That is all.

Miss Jenkins: In effect, we have concerns, as well, from the immigration component if the government can be directed to withdraw services, including linguistic and cultural, for reception and integration of newcomers. That is going to erode our multiculturalism policy as a fundamental right for the cultural retention, if that is withdrawn from a federal responsibility to a provincial one. While Ontario has a very good record of what it is doing in citizenship concerns, we have no way of ensuring that will be uniform across

the country. That would be a step backwards from our 1971 multiculturalism policy. So it is tied in. Even though we have assurances about the charter, this immigration component does cause us concern.

Mr. Allen: You would not think that, since the charter is affirmed in the immigration section, therefore the equality clauses of the charter would require that there be that standard across the country and that therefore the federal government would have to exercise it because it is the only way they could get equality.

Unless you had a concordat of all the provinces agreeing to that, which the Supreme Court might well dictate under a challenge, the way the immigration section is--

Mr. Chairman: Can I just jump in with a supplementary here, because I just want to be clear on our understanding. In subsection 95B(3), which is the section which affirms, as I read it, the Canadian Charter of Rights and Freedoms with respect to the section on immigration, are you saying that, while it is fine, it does not--I would read that as saying that basically means then that whatever is in the charter, no matter what happens, that is the accord, where they have said that the Charter of Rights and Freedoms with respect to any immigration agreement, must be followed.

Now, what you are saying is that is still not enough. Is that it? So I guess it is, what else--that would appear to confirm everything that is in the charter, but you are saying that it does not, or that there are some other things that need to be affirmed. Because I thought the reason that was added, and it is something that was added, was to deal specifically with the concerns that you raise. I just want to make sure I am very clear on what you are saying here, because my reading of that says that the Canadian Charter of Rights and Freedoms--they are underlining it and highlighting it, and saying whatever is in that charter applies to any of the agreements and therefore, there cannot be any infringement on mobility rights or anything else as it is set out under the charter. And I just want to be clear that I understand your concern there.

Miss Jenkins: The point I was making was that we would not have the uniformity of services if the citizenship services tied in with immigration. were not uniform across the provinces and it was not built in that we could impose standards from the federal to the provincial level, rather than it was just a service be provided. Only general objectives can be insisted upon, not standards.

Mr. Chairman: Yes, but that is not specifically a charter issue, but rather another one.

Miss Jenkins: Correct. It is another one which came of the Meech Lake accord.

Mr. Chairman: OK. I am sorry.

Mr. Allen: It was essentially that whole question I just wanted to lay before you, because it is more than a little puzzling and there seems to have been an attempt to respond to the questions you have been raising. I am just trying to get some detail from you as to where the remaining problems lie. I hear what you have said with respect to immigration services and processing and that kind of thing, and reception quality, and I think one would have some concern about that, but I understand that would be built into

any agreement that has force of law under that section 3. I will just leave it with you. If you have some more on that in detail that you can feed back to us, I would appreciate having it because we are trying to work our way through that.

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Miss Roberts: I would also like to thank you for your presentation. We have had several presentations from multicultural groups and your presentation as well indicates the concern that a large section of our population has with respect to the "distinct society" and the entire Meech Lake accord.

I would like to sort of look into the future, with or without the Meech Lake accord. There are changes that have to be made to the charter. The charter is not a document that is without flaws; it is flawed as well, which we are all aware of. There are some changes that should be made to make it more reflective of a changing Canadian mosaic, which is of concern to us all, and the Constitution most likely will have to be changed as we go from one decade to the next.

Process is very important. The process that brought us here is one that has been called flawed and many other things. Have you considered what process you would like to see put in place for changes to the charter or to the Constitution or to any other constitutional document, how you would like to have your input into the political system or into some system to keep a living charter going?

Mr. Bucci: I see that as a two-part question. First of all, in a very practical sense, it is my view that if this Meech Lake accord proceeds, we will never see any changes either to the Constitution or to the charter, because you need everyone to agree and I do not think you will get everyone to agree ever again. That is one component.

Miss Roberts: Remember that there are two amending formulas, which you are aware of, so you do not need everyone to agree on each amendment.

Mr. Bucci: What we would probably like to see is tentative agreements by the premiers, except a Premier should not necessarily place his reputation on the line by signing these tentative agreements or changes, so that groups would have an opportunity to have input. Then we would like to see a free vote in each Legislature. I think that would be a fair game.

Miss Roberts: That is a good straightforward answer.

Mr. Chairman: I want to thank you very much for coming this afternoon and presenting your brief, as well as answering a number of questions. As you can see, we are at the point in our deliberations where we are trying to work our way through a number of areas. It is very helpful when a group such as yours focuses on a particular area and we try to think through some of the concerns and how we attempt to deal with those as we move on towards our report. We do want to thank you very much for coming this afternoon and sharing your thoughts with us.

Perhaps I could now ask E. A. Turner if he would be good enough to come forward. As I have done, Mr. Turner, I apologize. We fell behind early today. I am afraid we are still trying to get caught up. We have a copy of the letter you wrote to the Premier (Mr. Peterson). Perhaps you would like to make some opening remarks and then we can follow that up with some questions. Again, we welcome you here this afternoon.

E. A. TURNER

Mr. Turner: First, I might say that I do not represent any group. I have a group of four and a half, my wife is another one, of five and a half and myself that I am perhaps speaking for. I am talking for my two sons, my daughter-in-law and my two grandsons. Meech Lake has done a lot to upset our family.

In my statement today, I will not refer to the "accord" as such. I firmly believe the majority of people outside Quebec oppose this deal and I therefore will refer to it as a "deal." I am not in business any more. I have lots of time, so 4:30 p.m. does not bother me. I have had deals in my time that were done at three o'clock in the morning, but always they were subject to examination, scrutiny and maybe second thoughts when you woke up after you slept in.

I recognize, based on statements by the Premier, that this committee is, in his opinion, toothless. He has declared that not one stitch of the deal will be unravelled. I had hoped this committee would be a little bit different from the Monte Kwinter free trade circus, and we shall see.

On my father's side, I am a fifth-generation Canadian, although I am not a Canadian; I will come to that later. I spent five years in the navy. I came home to married life, a job, raising two sons, completing my education in commerce at McGill University and retiring very successfully. I refused even an interregnum of 10 months; I refused to take a penny of unemployment insurance because it is beneath my dignity and still would be to take money such as that from other taxpayers.

Having been born and raised in Montreal and having come to Toronto in 1957, I can tell you that I have perhaps a more intimate knowledge of the people of Quebec than most of you--I am assuming that--and of how they act and react. I can give you prime examples of how the Meech Lake deal is going to work in Quebec, based on experience and not on a fanciful pipedream, as it now is.

I would like to buttress that by saying we had a large family on my wife's side and on my side in Montreal. My sister lives there with her husband now and her six kids are gone. My brother, his wife, and his six kids are gone. We are here and my kids are here. There are scarcely any of us left there, because even my nephew, who lives now in Calgary and who is fluently bilingual, was refused a job because his name was Buckingham and not Lavolette. It was made very clear to him. So when I say I know how things are down there, believe me I know it from bitter personal family experience.

A common reaction to that, of course, which is very prevalent today in our media--television, radio and newspapers--is to instantly label such a person as a racist or a bigot and then get rid of him, but there are a lot of us bigots around, I guess.

The Meech Lake deal will pay money to any province which decides to do its own thing on national social programs. Quebec, of course, as I am very much aware, will do its own thing. They do it in income tax and income tax collection and even will not permit you to have your old age security cheque deposited from the government to your bank account; it has to go to them and they mail it to you to make sure you understand where all that good money is coming from. My sister goes through that; I know it.

There is no guarantee that they will spend all the transferred federal moneys on a designated program. You only have to look at the way they honoured the medicare agreement. On the medicare agreement, they promised that they would pay outside doctors, i.e. in the province of Ontario, Ontario rates if they treated Quebec patients. Anybody who reads the newspapers knows full well what they have done to the doctors in Ottawa who have to treat people across the river because there are no facilities over there. They simply gave them Quebec payments and said, "Now go whistle for the rest because we are not paying it to you."

1630

Let us touch on this distinct society, which is really galling. Does this mean that the rest of Canada is indistinct or, as my neighbour says, "Maybe we just stink." This gets me back to my earlier statement when I said I was a native of Canada. Now it looks as though I am indistinct or second class, but not a Canadian. Because of our peerless political system, where we are always looking and we are willing to pander to anybody for a vote--we will pander to any group, for that matter--we are all now hyphenated. After five years in the war to protect something I thought I cherished, I am not Canadian; I am a hyphenated Canadian, I presume either English-Canadian because of my father's background or Irish-Canadian because of my mother's background, but not Canadian. There is no such thing as a Canadian.

Now we are going to be further balkanized. French Canadians will be distinct, or first class, all others hyphenated and second class. I guess the Scots on Cape Breton Island will not be anything. It makes me laugh to hear the mindless prattle about losing our culture to the Americans. How can you have a Canadian culture when you do not have a simple, pure Canadian?

Meech Lake gives Quebec greater control over immigration whereby it can steadily increase its population, but Meech Lake forever limits a province such as Manitoba to less than five per cent of the national population. Meech Lake makes Quebec unilingual French-speaking, and all other provinces are to be bilingual. As Mr. Rémillard of the Quebec government said after the Meech Lake deal, this means we get rid of everything English in Quebec when the deal is ratified. Mr. Bourassa tried to play that statement down by saying, "Mr. Rémillard did not mean to say that at this time." He did not deny the contents of the statement, just the timing. What does this do to the 20 per cent English minority in Quebec, or does anybody outside Quebec really care?

I said I knew Quebecers and how they react from living there and from doing business there. As one French businessman told me, they started out by demanding changes in every political area to French, and always but always made sure that the Anglos were saddled with a sense of guilt. After all, it was the Anglos' fault that they had a lousy education system and that the church would not let them move away or that the church would not let them get into business. But that is overlooked. The system has worked, and now even our own government here wants to make Ontario officially bilingual while retaining unilingual Quebec.

Meech Lake is giving Quebec special status in the Constitution and guarantees over the lesser provinces. Why should one province have special privileges? We are all supposed to be equal in the Constitution. When you pander to one province, you are taking away from another. Mr. Bourassa described Meech Lake as a great victory for Quebec. Is Canada now to be a country of victories or defeats for provinces? What kind of country will my grandsons live in?

Meech Lake is too important to leave to this quick, hurry-up deal that was perpetrated in the middle of the night. It is too important to leave to those people who have hyphenated us and now propose to balkanize us. I find it strange that Mr. Peterson, in writing to me, tells me he does not have to hold a provincial referendum on Meech Lake, a deal which will be carved in stone, since he has 95 seats. However, Mr. Peterson wants a federal election on free trade, even while Mr. Mulroney won 211 seats.

I do not believe that we can live peacefully forever with the two different systems we have. It has been said from time immemorial that the French system is that everything is forbidden unless it is permitted and the English system of government is that everything is permitted unless it is forbidden. We cannot have both houses living in the same bedroom and hope to create any kind of offspring.

I could read you a long dissertation on why this will not work, but I am not going to bore you, because you are late and I know from what I have read that it is not going to make any difference anyhow. Mr. Peterson has come down from the mountain and delivered his sermon, and he says that what you and I think does not really matter.

In conclusion to these brief remarks, I just want to say that I regret this charade, but I am not surprised. I am surprised that we are going to get a tax increase when we spent over \$100,000 on the Fontaine by-election charade and we blew thousands upon thousands on the Monte Kwinter circus. Here we go again. It is no wonder, as I say, that my sons and his peers--my son is now 41--hold their noses when they discuss Canadian politics. We are going down a wrong road here. People do not come into this country saying, "I am proud to be Canadian." As that man said to me in the train in the United States once, "The greatest thing in my life is to be an American citizen," and I do not think we are heading that way in this country. We are all hyphenated, balkanized and maybe even bastardized.

I was going to say that Mr. Peterson's arrogance is a reflection of Trudeau's arrogance, but I will not pursue that subject, although I have lengthy notes written on it. I will not take the low line enunciated in Ottawa by two of our national leaders by saying, "Tear it up or I am going to tear it up." I think we should go back to the drawing board, get some more input and find out how real people think about this.

I am not a member of any political party. Although this is not read with favour in many government places, I did work in Ottawa for 15 years in the private sector. But I belong to an organization that is anathema to politicians. It is called the National Citizens' Coalition, and our most recent survey of public opinion on this matter shows that 45 per cent of the people who were polled oppose it, 44 per cent are in favour and the other 11 per cent are undecided. When you have such a divisive subject as this, to plow ahead without regard to the consequences, I think, is a huge mistake. If I tried to do that in business, I would be canned. I do not understand why we are doing this this way.

Thank you.

Mr. Chairman: Thank you very much, Mr. Turner. I think you have mirrored in much of what you have said a lot of frustration that people have felt, not only about how this agreement has come about but, indeed, other areas of, I suppose, public or political life where decisions are arrived at and where a great many people feel that the process has not allowed for their input.

I think what the committee wants to do and is going to try to do is to set its own time frame and pace. We have a great many people still to hear from and we will be hearing from them. When that is completed, we will try to sit down to reflect on what we have heard, to read the briefs that have been submitted from people who have not come before us and then to look at the whole accord in that light. I do not know where that is going to take us.

You were here this afternoon and sat through some of the other presentations, and you know the concerns at least of others who have raised some of the points that you have. Indeed, those have been raised on other occasions. I guess what is always hard, as I say to myself as an individual who happens to be a member of this Legislature, is that I would hope that as I deal with this issue--and, being a member of this committee and also a member of the Legislature, I have to; that is one of my responsibilities at this point in time--just because I am elected or because, for whatever reason, I am a member of a certain political party, none the less I am still living in my community, associating with my friends, talking to my family and to various people and trying to work my way through a lot of very complex issues. I appreciate that I at least have an opportunity, while here, perhaps to make some contribution or to have some impact in a way that is different from individual citizens.

I think it is awfully important that you have come forward because one of the things you have underlined is that our whole process becomes very suspect if people lose respect for it or if they feel there is no integrity to it. One of the things a number of us, and indeed people who have been before us, have all focused on is the process by which this accord has come to us, and secondly, how can we make sure that, whatever happens to this Meech Lake accord, how can we deal generally with constitutional change so that people might in the end still not agree with what has happened but at least there has been a process put in place that is credible and is fair. If we do not, I think then your expression, your frustration, will, in fact, be that of the vast majority of Canadians and at that point then, really our system of government will not function.

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I found it interesting that in the last American presidential election, I believe, for the first time less than 50 per cent of those eligible to vote voted. In Canada, to this point in time, we have a higher percentage who vote in federal elections, something around 70 to 75 per cent. In provincial elections in Ontario it is over 60 and higher in other provinces. I always see that as a measure, to a certain degree, of how people feel about the political system, the extent to which they feel they can trust the people who are participating in it.

I think we have to be very careful of that trust that individual citizens have with their government, with any government, whether it is Liberal, Conservative, New Democrat or something else. It does not matter. In listening to your comments, I think that is one of the things that I hear, which is a fundamental lack of faith, or a growing lack of faith, as you see it, in how our system is working in reflecting the views of ordinary citizens. That is something we have to remember very clearly because we can get caught up in the intricacies of some of these issues and sometimes forget about just what it is people do think about an issue of this kind.

Miss Roberts: If I might just make a brief comment, thank you very much for your presentation. Although you appear--all your bluster and

everything, you certainly are a great Canadian, whether you want to put a hyphen in front of it or not. You have taken your time and energy to think this through and to come before us. So you still believe in the process, which gives me great hope, that someone like yourself, a private citizen, who cares so much for his family and for the development of Canada, would come here and express his concern.

My one question to you with respect to process is--we do not like what has happened in the past. There is no question about that. All of us seem to agree on that. The process that you envision I thought was very helpful, that we go back and talk about it. I assume when you said that, you considered talking about it at all levels, federally, provincially and outside of the electoral system itself. Is that correct?

Mr. Turner: That is correct. I think that any time you cook up a deal in the middle of the night and then you say it is a fait accompli and sign it and that is all there is to it, that is very, very wrong. If you were coming along with a new tax proposal or something of that nature, that could be changed in the next session of the House or if you were coming along with a free trade agreement--which is going to be torn up, maybe. But when you are talking about the Constitution of the country, I do not think you fool around that quickly. I think you go back to the drawing boards and talk it out and make sure. Do not be throwing everything at your girlfriend trying to get her to come to the party. You are giving the store away. I just do not believe that is correct.

This agreement, as some of the people before me have said, is virtually carved in stone, and you are going to have to get the agreement of 10 provinces to change one sentence. That is wrong. There is something wrong there. In the United States--what do they require for the equal rights amendment, two thirds of the states or something of that nature? Is two thirds the amending formula? This is the only country in the world that is going down that road. We have gone down so many slippery slopes up to now, many of them things about which I disagree, but for that I am a bigot or a racist or something.

We are going down the wrong road here and we are going to pay for it, my grandsons are going to pay for this. It is not right; I do not like it. It is too rushed. If it is that much of a rush of a deal, it cannot be good. Or, as the old saying goes down at Eaton's, when I used to deal with Eaton's, the buyers were always told: "If you have any doubts, don't buy. If you have got one little doubt, don't buy."

We have got doubts. Do not buy it. You are giving the store away. Maybe you do not think so, but that is the way a lot of people feel. I can tell you we had a pretty exhaustive survey done by the National Citizens' Coalition, and it showed this is a very divisive thing. The government is rushing ahead saying: "We don't give a damn. We are going to do it anyhow." You know, they are only the government. They are our servants when it is election time. Let them stay servants now and reflect our views.

Mr. Harris: I think a number of us share your concerns with the process, and a number of witnesses have. I want to ask you something specifically, because you have brought up--

Mr. Chairman: Excuse me, Mr. Harris.

Mr. Harris: Should I speak into the microphone? Well, you may not

want this on tape; I do not know.

Mr. Breaugh: You may not want this.

Mr. Harris: That is right.

No, I want to deal with the French question. Let us get right to the heart of the matter. I have read your letter to the Premier (Mr. Peterson), where you talk about 20 per cent English in Quebec and the official language there is going to be French and the rest of the country is going to be bilingual. In discussing this with a number of people in my riding over my time in political life I have had this argument used many times. I would like to ask you, since the problem is Quebec being unilingually French and that is one of the reasons the rest of us should not be bilingual, would you then be supportive of the whole country being bilingual?

Mr. Turner: No. Personally, I have felt from the very beginning that this idea of the whole country being bilingual is a mistake. I have travelled a lot. I will guarantee you that I have travelled across this country on business more than most members in this room today. I have had occasion after occasion to see what is happening out there, and it does not work.

I was in Calgary when they had an airline strike and I could not get back. I went down and I bought a ticket at the railway station. I was lined up and this chap in front of me demanded a ticket--he wanted to buy a ticket to Montreal--and because the girl could not speak French, she got a strip torn off her backside by that gentleman. I use the word "gentleman" in quotes.

I have seen so many. I have got a young neighbour of mine. It does not work, let us face it; and down the road you are going to find, 10, 15, 20 years from now, it will not work. I have got a young former neighbour of mine who was living here in Toronto. He worked for an oil company which got sold to Petro-Canada and he was transferred to Calgary. Very bright young man, engineer, moving up the ladder very nicely. He is fluently bilingual because he felt it was necessary for him. I was out to Calgary in October. I visited with him and he was downcast, demoralized that he was called in and told, "No further advancement." Jobs above him from now on are reserved for francophones--not bilingual people, francophones.

It is the same as right here in Metro. I walked in to get a bottle of booze last week, and the chap at the Liquor Control Board of Ontario in the Bayview Village Shopping Centre close to my home broke a bottle. I commiserated with him and he said, "Oh, well, it does not matter; I am out of job soon, anyhow." I said: "How is that? I mean, liquor board business is always going up." He said: "Well, one of us has to go. Every Metro LCBO outlet in Toronto has to have a francophone within the next year, each store." I said, "Where are you going to get them from?" He says: "I understand that if they cannot get them, they will import them. I am the one who is selected to go." That is terrific.

Mr. Harris: Can I ask you, then, if you would not support the rest of the country being bilingual if Quebec is fully bilingual, would you then view that Quebec has the right to be French?

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Mr. Turner: I think they can speak any language they want down there; it is OK with me. Do not impose it on us.

Mr. Harris: Many francophones feel that the provisions of Meech Lake you object to will lead to that, to a French Quebec and an English Canada.

Mr. Turner: I do not know if it will or not, but I think Bill 101 certainly will. My brother-in-law lives in Montreal; his kids are gone. My sister lives in Montreal; her kids are gone. They are very bitter about it. The Anglo Alliance Québec is against Meech Lake, and this morning, according to the papers, French people outside Quebec have come out against it. Obviously, it is not the all-powerful popular thing across the country. More and more people are becoming disenchanted with it.

Mr. Harris: On this particular provision, I find your view and the view of l'Association canadienne-française de l'Ontario and the views of francophones outside Quebec and the view of the Alliance for the Preservation of English in Canada to be strange bedfellows. Do you understand that?

Mr. Turner: Yes. The French people do not like it because it does not promote French; it only preserves French. The English people in Quebec do not like it because they can see what is happening to them. I can see it when I go down there to visit my brother-in-law in Pointe-Claire. I can see it the way stuff comes in the mailbox. They are not allowed to put those foodstore stuffers, those flyers in the newspapers. They have to deliver them by hand; otherwise, it breaks the law.

You can see it in so many things. You can see it in the kids not getting jobs and having to leave. We had a large family there, 32 on one side at one point. I think we had something like 21 on my father's side, my side. I guess there are five or six down there now, and it is only because they work in jobs where they have tenure, so to speak, and cannot get booted out.

I hired people down there and I went through the whole process. I always wound up getting somebody who was French because the English guy who spoke English and French and who was perfectly bilingual was not acceptable at the retail stores when he went in to make his pitch. It was as simple as that. It is cold; it is bare; it is stark; but it is the language of the street and what is happening out there. It is not in this cosy little room. That is what is happening. They are not going to change anything. They have it their way. With this thing, they are going to have it even more their way.

I do not know. When I was in Ottawa, I guarantee you a human rights commission would like to hear what I did to them. I would be up there like Johnny Quick.

Mr. Chairman: Mr. Allen with a final question.

Mr. Allen: It was essentially my question that Mr. Harris asked, Mr. Chairman.

Mr. Chairman: Mr. Turner, again I thank you for joining us this afternoon. I am sorry we were later in getting started, but we do appreciate your frankness and your coming here this afternoon.

Tomorrow the committee will be meeting in room 151. There are just a couple of brief procedural things if we can go in camera.

The committee continued in camera at 4:55 p.m.

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(Printed as C-13)

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

WEDNESDAY, MARCH 9, 1988

Morning Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Morin

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

March, Dr. Roman, Professor, Department of Political Science, University of
Toronto

Johnson, Al, Professor, Department of Political Science, University of Toronto

Crann, Gordon, Gordon Crann Associates

LEGISLATIVE ASSEMBLY OF ONTARIO
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Wednesday, March 9, 1988

The committee met at 10:06 a.m. in committee room 151.

1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: Good morning ladies and gentlemen. If we can begin our session today, I would invite Professor Roman March of McMaster University, the department of political science, to please come forward and take a chair. That is fine. We want to welcome you this morning, to make your way from Hamilton as one of our committee members does every day exploring the wonders of the Queen Elizabeth Way.

We have received a copy of your presentation. If you would like to lead us through it however you would like, then we will follow it up with questions.

DR. ROMAN MARCH

Dr. March: Thank you very much for your remarks and I thank the members of the committee for being here to hear what I have to say. Essentially what I am doing in this brief is I begin by saying what Meech Lake is not about. The opening remarks and paragraphs are addressed to many of the other people who made presentations and so on. What I also try to do is put the accord in some historical perspective.

By the way, I should identify myself. I am a professor of political science at McMaster University since 1968. I have been involved in constitutional law teaching matters of it, not formally in a law school, but through my regular courses. I also teach an honours course, and have taught since 1968 on Quebec politics. In fact, I dismissed my Quebec politics class this morning in order to appear here.

Mr. Chairman: You should have brought them down.

Dr. March: I am not sure that is a good point.

The point I am trying to make about the Meech Lake accord is that it is not about all these other matters; it is not about property rights or women's rights or aboriginal rights. Other constitutional conferences and other accords can deal with this. For the moment, we have here what I would call a minimal requirement. That requirement essentially, which is met by the Meech Lake accord, is to reintegrate Quebec into the constitutional process.

I argue in the paper that, for a variety of reasons, until Quebec formally adheres to the entire 1987 accord and to the 1982 accord or agreements--the Constitutional Act of April 17, 1982--Quebec will continue to act as it has; simply either refusing to participate or exercising an informal veto over the entire constitutional process. My argument is that there are historical reasons why Quebec has reasons to be very upset about its present...

~~My argument is that there are historical reasons why Quebec has reasons to be very upset about its present anomalous position within the Constitution. I~~ further argue that until there is agreement among all the provinces, the federal government and the federal Parliament to the Meech Lake agreement, Quebec will continue to act in a very negative way as it has been. All these other special interest groups--they have their own agenda and they have their own right to speak to their groups and members--must realize that until such time as there is agreement and support by all the provinces and the federal government for the Meech Lake, there will be no progress in any of these other matters. It is as simple as that.

1010

That is a political statement rather than a constitutional one and it stems from 20 years of teaching Quebec politics, trying to understand, as I point out, the anomalous position in which Quebec is at the moment and the fact that there are questions even of honour and integrity that are involved. I make the argument in the paper briefly that had Ontario, for example, been in the position of the Quebec government in 1981-1982, the 1982 Constitutional Act would not have been passed. It simply would not have been passed. The other provinces would not have agreed.

On the process, I cite ??Stanfield on this and several other people. There are a host of them who have testified at least to the federal Parliament about the invidious situation in which Quebec was placed by all governments engaging in a public process. There is nothing wrong. I, as one, in principle support openness in government. I have written a book on that matter. But because of what transpired in 1982, Quebec and the other governments have been in effect forced by the failure of the 1982 accord to engage in executive federalism. Some people call it secret federalism.

It is unfortunate perhaps that the principle of executive federalism may or may not have been enshrined in the Meech Lake and ??has been entered, but that is a minor point. The key point is that when one raises the question of the honour and integrity of any government of Quebec in this process, then those are the important things. That is the important question. Unfortunately, the process requires that these negotiations and so on be conducted, in terms of executive federalism, in secret.

It would be a very dangerous thing for the long-term political stability of this country for any government that has adhered to the Meech Lake, or agreed, or was part of the process, to now renege on it. We could argue that they should have simply not required unanimity of all the provinces. One could argue that perhaps that was ??. But had there not been the requirement of unanimity, then exactly what is transpiring now would be happening.

Individual governments are under intense pressure from what I call these either individuals or interest groups speaking for a particular segment of Canadian society and so on, and the first ministers who engaged in the process were quite aware that they would be under this intense pressure--they had been through it before--and that had they adhered to the 1982 amendment formula whereby seven or two-thirds of the provinces constituted 50 per cent of the population, it would be sufficient to pass an amendment. They agreed that they must stand firm.

Mr. March

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I agree with that. That is not a constitutional requirement, but it was a political requirement. I urge the Ontario government not, at this stage, to break that agreement because, should this happen, we will be back where we were in 1971 with the Victoria Charter. It will be at least a decade, and perhaps two decades, before any government in Quebec would agree to re-engage in this process. So I am pointing out that at the present moment we are at a constitutional...

C-1015 follows.

in 1971 with the Victoria charter. It will be at least a decade and perhaps two decades before any government in Quebec would agree to re-engage in this process. So I am pointing out that at the present moment we are at a constitutional impasse, and Ontario would do exactly what Quebec is doing now, say, "We are not part of the process. We did not agree. You people"--whatever it is. You can call it sabotaged--"sabotaged. The rest of the provinces ganged up on us"--I use those in quotes, and so on--"and therefore we, out of sheer political necessity, must not agree to any further constitutional amendments." And that is exactly how Quebec is acting, since 1982, and will continue to act in that fashion if the political pact is broken. That is contained in my brief.

I look at various other parts of the agreement and just point out that in essence--I use the word "innocuous." Most of the other amendments, proposals are quite innocuous, and that the ?? or the concerns of others are not well placed, who argue that the effect of the various proposals is to destroy federalism or weaken federalism.

I see that Mr. Keyes has a question.

Mr. Chairman: If you have completed your ??just wait that ??--

Dr. March: I prefer to answer questions. I could talk for three hours nonstop. That is why I am a professor.

Mr. Chairman: It is the manner by which members are recognized. So if you see hands going up, you do not have to stop.

Mr. Keyes: It is just to get my spot in the speaking order.

Dr. March: All right.

Mr. Chairman: If you would like to complete your opening comments and then we will--

Dr. March: There are many things that are addressed. All the five points are addressed in here, but just to point out how innocuous some of the other proposals are. For example, the Senate and the Supreme Court having the provinces nominate members.

I point out that in another federal system, the federal government--the German--I am getting mixed up, but the FRG, the Federal Republic of Germany--we will get it straight. There, they also have the federal system. When it comes to, for example, what they call their constitutional court, the process is very quite straightforward and it is far more ??the--there the members of the constitutional court are elected by the two legislative bodies--elected by the legislative bodies. One legislative body of course is the federal body and the other one, which is the Bundesrat, which is the equivalent of our Senate, is comprised of primarily ministers from the Lander. The Lander are equivalent to our provinces, and they elect the other half. So in effect, half the members of the constitutional court, or the supreme court of West Germany, are elected by the two legislative bodies.

All we are suggesting or has been suggested in Meech Lake is that the provinces will nominate. But it is clear that the Prime Minister is not bound to accept those nominated. So I use the word "innocuous." These are trivial.

11x March

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What of course is, if one looks at Meech Lake carefully--is the fact that on the next meeting perhaps this year, there will be a very extensive examination of the Senate in its entirety--may end up with an ??election and so on. We should not be surprised to see a very formal, massive document dealing with the entire Senate. So I am just saying many of the proposals are innocuous.

I invite questions.

Mr. Chairman: Thank you very much. As you have noted, we have a copy of your full submission which we can refer to later, as well. I have Mr. Keyes.

Mr. Keyes: It is enjoyable to quickly scan through your presentation, but it leaves a question in my mind with which I want some help from you. As we look at the presentations that I have had a chance to read--and I am only on my second day on the committee, so I have the ignorance that the other people are not blessed with--the academics who look at it analyse the document and basically say, "It is a good document and it does what we need to achieve."

On the other side, we get all the interest groups who come, who represent the handicapped, the native people, women's groups, and all of these, and they all say, "It is a horrible document because it is taking away our rights."

~~We see it says that we have the dilemma. Probably if we had listened to academics who analyse these things--~~

C-1020 follows

(Mr. Keyes)

and they all say, "It is a horrible document because it is taking away our rights."

1020

To me it says that we have a dilemma. Probably if we had listened to academics who analyse these things--and having been one myself for some years, I tend to side with them to say, "Yes, it is a good agreement, because they are analysing it in the context of history, so they can look back and compare it to 100 years ago, or whatever." Whereas the groups who look at it perhaps look at it more in the present as to what they seem to see they are losing.

My dilemma is how do we get to the public the message that the agreement should be looked at in the first instance for what it was designed to achieve, and that is to bring Quebec fully into Confederation. Once that has been achieved, we then start dealing with the other concerns that are there.

Is it possible that the amendment that came before us went a little bit too far in attempting to achieve to major objective of bringing Quebec into Confederation and by going as far as it did in how we elect the Senate in a sense ??who would put input into it and the Supreme Court and a few of the other issues, that it then triggered some of the other concerns? Had it been less of a document, would it perhaps have achieved the goal for which it was intended without sparking these other ones?

So there are two questions in there. That one, but the one mainly is how do we, as a province, as a committee, get the message to the public on this side? Let us do the one thing first and then we can carry on with these others afterwards?

Dr. March: There are two major points there. One is about the publicity thing. I, in my own tiny, little way by appearing here before the committee, am trying to establish on the record and so on--whether we will achieve any publicity and so on is another matter. I am no expert in communications in that area.

I understand the dilemma. That is why we have representative government. The legislature must make up its mind. The individual members, through their caucuses and so on, must assert themselves on behalf of the people and so on. We academics then are free to be philosophical. That is about all we can contribute I suppose.

On the other part, one can understand why the interest groups--I do not use that word pejoratively at all--have to focus and rightly so. Of course you understand that they focus on those aspects of the Meech Lake agreement which do alter the relative powers of the federal system with respect to programs. As soon as we get into that, we get into the area that in effect sections 91 and 92, which are not even touched by Meech Lake but somehow or other the implication of these interest groups is somehow Meech Lake touches on sections 91 and 92--this is the distribution of powers between the federal and the provincial governments.

If you look at the history of the Constitution and particularly in the 20th century, and particularly since the Second World War, the federal government has massively moved into areas which are clearly not within its

Dr. March

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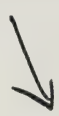
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competence, and Meech Lake does not address that. That will have to be addressed. However, as part of the negotiation process, the other provinces had to--in negotiating with Quebec through Senator ??who was the key operative here on behalf of the federal government.

The other provinces have their pound of flesh. Right? It is incredible that somehow or other in the future as part of the constitutional agreement there is fish. We all eat fish, but what is it doing in the Meech Lake thing? We know why. It is because the premier of Newfoundland demanded that this be on the agenda. So the process is not just to bring Quebec in, but other provincial premiers had their particular interests incorporated in the document. So in that sense--actually the fact that fish is in there is embarrassing to me, and I do not mind being quoted on that. It is embarrassing that it is in there. However, the western provinces have their triple E senate on the agenda. So in order to agree to the linguistic provisions of the Meech Lake agreement, and to agree to incorporate the idea of the distinct society for Quebec, the western provinces, in order to ??demand it and have it in the Meech Lake agreement a discussion of the senate.

As I say, the proposals in the document are very innocuous; however, it stipulates that in the future--

C-1025 follows



(Dr. March)

~~Western provinces in or the degree demanded and how in the Meech Lake agreement a discussion of the Senate. Now as they say, the proposals and the document are very innocuous. However it stipulates that in the future, I mean in 1988 or 1989, there will be a full discussion of the Senate. So we will have a series of trade offs here and so, you know. Well, I will leave at that.~~

Mr. Chairman: If I might just note. I have Mr. Allen, Mr. Harris, Mr. Elliot, Mr. Breaugh, Mr. Offer. I would just remind committee members, I think we are going to have a very interesting and full morning and we could just keep that in mind as we provide our questions. With that I will move on to Mr. Allen.

Mr. Allen: Professor March, either you trailed me or I trailed you down the Queen Elizabeth Way this morning. We both got here on time, which is amazing. That must be some kind of record. But could I ask you first of all, you made some very brief comments in passing about the process and about executive federalism, in terms of your review of Canadian constitutional amending processes--where does this one rank? It ranks in another sense for some people as a rather unhappy kind of process, one that was very hasty, like a collective bargaining session that had to get done at the end of the collective agreement which is already overdue for two years, ect, and you went through the smoke-filled room at the dark night hours and the coffee and the donuts and routine. You sort of got there or something at the end of it, but that left the impression across the country that a lot of things were thrown in rather hastily, the trade offs were ?? considered and so on. Is that a process that is really is tolerable for us in the future?

Dr. March: Well, there seems to be a misapprehension about the process. I know the press has covered it that way and, of course, we only know what we read in the papers I presume or see on television. The process mentioned very briefly, one sentence in my brief, began almost immediately on September 4 1984, on the day of the election. Immediately, Senator Lowell Murray was ?? by the Prime Minister because in effect an envoy between the provinces and there was continuous negotiation between the provinces for at least two years prior to the Meech Lake. Now again these were not public, and therefore the government, federal and other government participating have paid the price because when you conduct things in secret that leads to apprehension and so on. Whether it is on local council in Hamilton, or at the highest levels of government. Secret diplomacy, secret negotiations raise apprehensions and therefore I say it is an unfortunate process but in these, giving the context of what is tried to be achieved, one can understand and I say it is unfortunate that it seems that it is going to continue that way. Therefore one should, you know, look at other ?? and not the process. But those are not addressed what so ever in degree with it. I deplore the process but I understand it.

Mr. Allen: What is the best point at which public participation and the insertion of the legislative process should take place in constitutional amendment activity of this kind. Is it--clearly we have locked ourselves in and perhaps in an unfortunate way, because there is sense, I think, among many people that this could be improved, even though you say some aspects of the amendments are innocuous but there are some point that are quite clear where the statement could have been a bit somewhat more reassuring and could have been more inclusive of some groups in the community. Language could have been better at some points, some ambiguity that ought to be cleared up, at least

Mr. Allen

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one statement of fact that is out of order and so on. One sense is that it would be better if there was a space in which there was fairly open legislative consideration and hearings and then the first ministers' went back into session to tidy up before they got themselves totally committed to a package. Is that workable in constitutional discussion of this kind? Are there down sides to that or is that the way it ought to happen?

Dr. March: Academics have traced and others have sort of traced the process in Canada by which, and I use the word executive federalism, it is a neutral non pejorative term, but in the essence it means that the constitutional negotiations are carried out as though we are dealing, and I use the word diplomacy, as that the process is one of treaty negotiations between sovereign provinces and the federal government. Therefore the Legislatures are deliberately...

(C-1030-1 follows)



(Mr. March)

~~Although we are dealing, and I use the word "diplomacy", is that the process is one of treaty negotiations between sovereign provinces and the federal government. Therefore, the legislatures are deliberately excluded from this.~~ It goes right back to 1867 and even earlier Colonial period where it is seen under the parliamentary system, particularly the British parliamentary system, that these kind of negotiations-- which, in effect, are almost diplomatic because under the Constitution the provinces have virtual equality, equal status-- are seen as stemming from the prerogative of the crown. Then we get into some very heavy Constitutional--and so on. This is an ongoing tradition in British parliamentary systems; Constitutional issues are not referred to the Legislature until after they have been concluded and are a pact. We have the provincial and federal executives having the attitude these are not negotiable, not subject to amendment. This is a very unfortunate process. It is not a necessary, this could be changed. But that would have to involve some very fundamental changes in the nature of parliamentary systems in Canada at both levels.

1030

Mr. Allen: Just a last quick question, and then I will yield the floor. Is the implication of what you are saying that in fact we are dealing with 11 equal governments in Canada? That, certainly, I think, is not the only interpretation of what happened in 1867, that there was not equal authority devolved in that sense upon both the federal government and the provinces. Have we, over time, become in effect a nation of 11 principalities that really are dealing as equals regardless of the national-federal as against the provincial domain?

Mr. March: There has been an evolution in change and so on. This development of executive federalism is really something that has emerged over the last two decades. One literally can go back to the Victoria Charter in which the provinces and the federal government agreed to set provisions and the Quebec government felt constrained. That was Mr. Bourassa--this is very paradoxical, but the same Mr. Bourassa who adheres to Meech Lake--was the one who scuttled the Victoria Charter. Really, that was the test. In effect, they exercised a veto. That unilateral veto by Quebec, having been agreed to and signed, was accepted by the other provinces. One can almost say at that point then the principle--it is not enshrined in the Constitution at that time--was accepted that this would happen. Of course, Quebec has adhered to that precedent since 1982: We did not sign, we did not agree, we were for whatever reason, sandbagged and so on, consequently, we are not going to participate in the process and we will sabotage the process. I will use the words, "there was a Constitutional impasse", but behind that are all these other things I have said.

We have got to get out of that or else there will be no progress for these other groups. When I call them special interest, they have very legitimate concerns, some stemming from Meech Lake perhaps, but I think they are being alarmist in that sense.

I also argue with respect to say language and so on, the nature of the federal system is changing substantially. We are, in effect, moving towards a community of community. Now, this may be undesirable, but that is where we are going. If that is the case, then it is going to be very difficult to have, as

Mr. March

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other people have correctly pointed out, national programs, universal programs and so on.

All those concerns are there, but they are subordinate. My argument is at this moment they are subordinate to the more important thing of getting Quebec back in.

I will make the other point: all these things are subject to future negotiation. They are just going to be a bit tougher because now you are moving toward the state of the 1982 of management formula of seven provinces representing 50 per cent of the population too. In many areas, a requirement of unanimity. ~~That is unfortunate, but it is enshrining the very thing we talked about. But, in effect 10 provinces and the federal government.~~

C-1035 follows



(Mr. March)

~~representing 50 per cent of the population to, in many areas, a requirement of~~
~~minority.~~ That is unfortunate, but it is enshrining the very thing we talked about, that in effect 10 provinces and the federal government negotiate on an equal basis. That is worrisome for those who want to see a strong national government or even stronger. There is no doubt that is a legitimate concern, but Meech Lake has been part of a much longer process of evolution in which we have been evolving in that area.

I mean we even have books that have been published called ??Federal-Provincial Diplomacy and so on, which in effect in 600 pages state what I have just said in two or three minutes.

Mr. Harris: I will be very brief. On page 10 of your written brief, you talk about the language rights of Quebec versus individual charter rights. You indicate the way you interpret it is that this is indeed so, that Quebec collective language rights would take precedence over individual charter rights, aside from the fact that you say that if this were not so, there would be a whole bunch of lawyers in politic science, an employ which is attractive to many of us.

Leaving that aside, could you give me an example or two of the type of charter rights somebody living in Quebec would be overridden by ?? ?

Dr. March: The connection between Meech Lake and so on and this distinct society and this question of the Charter of Rights and so on, the linguistic rights of the English community in Quebec cannot be overridden by the Meech Lake agreement as such, particularly educational rights and so on. However, the Parti québécois government as its first legislative bill ??I am finding or Bill 101, which I used to call the 401, ??does contain in 215 sections of that bill, many of which infringe on linguistic rights. Had there been a Charter of Rights, then clearly the courts could have overturned many more provisions of Bill 101.

Of course, the English language community is still fighting through ??Alliance Quebec for the preservation of its linguistic rights and most of those clashes are over the individual right rather than community rights.

I express in here that the nature of legislation and the nature of government is such that we are constantly having to assert collective rights quite often and normally and usually infringe on individual rights. We are a community or a series of communities. Through our representative governments we grants rights to citizens. We expand rights, but we also limit rights. In this sense, the absolute right of the Quebec government to protect the francophone majority's rights is asserted in Meech Lake. If this will limit some individual aspects, my right as a professor to teach in a Quebec university in English only or--you know, my French is not bad, but anyway those things may be limited by some contractual agreement and so on, or they could be imposed by the Legislature. That then would limit my individual right, your individual rights or somebody else's.

For example, a very famous case of the nurse who was functionally bilingual, but somehow or other could not pass some test put by the language commissioner of Quebec and she lost her job. Yet, she had doctors and everybody attesting that she was perfectly able to do her nursing in French or English, but somehow she could not pass the test. The test was a legitimate

Dr. March


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legal test and so on. She failed it. The government had enforced it. In that way, her rights somehow were limited because it was a requirement that she able to function both in French and English but primarily in French and could not meet the test. There is where these things...and the charter cannot protect those things. It cannot protect that. ~~Just as in Ontario, we could demand of you, as we do~~

C-1040 follows



Mr. March

~~There is where these things...and the charter cannot protect these things. I cannot protect that.~~ Just as in Ontario, we could demand, as we do, of any individual who wishes to be hired by the Ontario government, that they have competency in English. If they cannot meet that test, whatever that test is defined, whoever administered the test, then they cannot be employed.

1040

What Meech Lake does is reaffirm the right of the government of Quebec in almost all areas of society: work, to insist that people be able to function in French. I have heard many people deplore this, but historically this is the absolute requirement that any Quebec government must have.

Mr. Harris: I understand. I disagree. I think in Ontario that if somebody was rejected because they could not speak English, you would have to demonstrate that speaking English was important to the function of that job. That is why they were not hired, not because they could not speak English.

Mr. March: All right. My assumption in making the point was that it was a requirement because it was a publicly funded hospital and they made the requirement that you be able to function in French. We certainly could make that a general requirement because you are dealing with the public. Perhaps if you were just sitting and pushing paper, that might be not be so important.

Mr. Harris: You can push it in any language. I do not know if that answers your question.

Mr. Chairman: Mr. Cordiano with a brief supplementary.

Mr. Cordiano: I think I will pass, Mr. Chairman. It will not be brief. I just wanted to make the point that Bill 101 is before the courts now. It is not very clear as to how the courts will decide on the question of language, but I think also--

Mr. Chairman: That is an interesting brief supplementary comment and we will move to Mr. Elliot.

Mr. Cordiano: I told you it would not be brief. I tried not to.

Mr. March: Mr. Chairman, just quickly. There are 215 sections to the bill. Only five have been before the courts. Meech Lake will not obligate--

Mr. Cordiano: But the case is before the courts now.

Mr. March: Yes. There are about five sections that have been challenged.

Mr. Elliot: My question is sort of a supplementary too, only it has to do with section 28 of the charter and it has to do with page 10. To get a flavour of the opinion, I would like you to share with us, if you would, is when you say the collective language rights of the francophone community in Quebec take precedence over individual charter rights, these come into conflict.

It seems to me, as the hearings have developed, we have had a number of

M. Ellice

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experts in front of us and a lot of interest groups in front of us at this point of time and there seems to be a fairly clear understanding in the minds of most of the people who have witnessed in front of us that there is a Constitution that has been in front of us for a rather limited length of time and a charter is now there since 1982 and we are now considering an amendment. It seems to me that all three of these documents should be considered in tandem. I am wondering if that statement of yours on page 10 of your submission has anything to do with overriding section 28 in your opinion of the charter.

Dr. March: Thatr is a poignant question. First of all, my assertion here is simply my interpretation. I am well aware, just as you are and other members are. I have gone through all the briefs and so on. That is one of the nice things about being a professor is that you are paid to read things that other people are saying, but nobody else has time to read, or very little time anyway.

That is my interpretation, despite what the Prime Minister has said, despite what Senator Lowell has said and so on. I look at the clear words. I have appeared before the Supreme Court of Ontario on the constitutional reference case and so on. As I said, I have been in this area 20 years. In this instance, I do not believe what the Prime Minister says on this. I think the courts through the initial interpretation clause and so on, which requires them to think of Quebec as a distinct society and so on, are in effect asserting a principle of collectivity, of collective rights and of the responsibility and the right--not just responsibility but the absolute right of the Quebec government to proceed with Bill 101 and any other further amendments.

~~I know that Professor Lederman and others have taken a very sanguined position on this, saying that there is nothing to worry about.~~

C-1045 follows



(Dr. March)

I know that Professors Lederman and others have taken a very sanguine position on this, saying: "There is nothing to worry. These are alarmist positions." I have to say that I am not alarmed when I say there will be an assertion by the Quebec government of its right to expand the French language in Quebec. That seems strange but there are still restrictions, not so much constitutional as what one calls sociological-societal. It has to be aggressive.

I take the position that if I were to live in Quebec, I would have to function fully in French, and it may be that the Quebec government--not necessarily the Bourassa government but some future government--may and is likely to proceed much further, with much more hardship, on some of the things that Bill 101 have observed about the restrictions that someone can put up a sign in English and well as French, that it must be French only.

That is absurd. That is paranoia on the part of the government, and it should struck down on that basis, more of its absurdity rather than its constitutionality. I tried to be brief on that.

Mr. Chairman: Professor March, I want to thank you very much for joining with us this morning. I should note that your reference about the unemployment of lawyers and political scientists. Yesterday we were talking about getting rid of provinces and there are a number of people in this room and that might be perhaps the best thing for constitutional evolution and amendment.

We thank you for your paper. I think, in particular, the discussion as it relates to the collective rights and the relationship to the charter has been an interesting one, which has been touched on to some extent but I think not in the way that you have today or in the detail. We thank you very much for coming here today.

Dr. March: I thank the members of the committee and Mr. Chairman for hearing me. May I sit back and follow the proceedings?

Mr. Chairman: Certainly.

Mr. Cordiano: No charge.

Interjections.

Mr. Chairman: If I might ask Al Johnson to come forward and to take a seat. Mr. Johnson, I know that at the present time you are at the University of Toronto in the department of political science, but I wonder if I might ask you to further identify the various things that you have been involved in over a long career in public service. I know I would miss a number of things and I know many in the committee do know the role that you have played, but I think it would be useful for us prior to beginning your presentation. We welcome you here today.

AL JOHNSON

Mr. Johnson: Thank you very much, Mr. Chairman, and honourable members. I do appreciate the occasion to talk to you today and I thank you for

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that invitation.

Where I am coming from obviously affects what I am going to be saying so perhaps I should come clean with you. I have been involved in the federal-provincial relations for a very long time. For 10 years, while I was Deputy Minister of Finance in Saskatchewan, I was that province's member on something that was called the Federal-Provincial Continuing Committee of Fiscal and Economic Matters. It had a lot of influence, but a very long title.

Then I moved to the government of Canada. I was assistant deputy minister of Finance in charge of federal-provincial relations for a four-year period. That was the time when we developed the equalization formula, when we developed the formulation which made medicare possible--the introduction of principles into the legislation, the post-secondary education financing formula, and some other things.

I then became involved in the first Constitutional reviews. I am inclined to call it 1968-71. I did not stay through to the Victoria conference but I was involved in the preparation of some of the working papers which the government of Canada presented at the meetings which considered the distribution of powers.

~~Later on, in 1973-75, somewhere around there, I was Deputy Minister of National Welfare and was involved in the federal-provincial social security review which, of course, had to do with social services and had a lot to do with federal-provincial program social services guaranteed annual income.~~

C-1050-1 follows.



(Mr. Johnson)

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In 1973-75, I was deputy minister of National Welfare and was involved in the federal-provincial social security review which, of course, had to do with social services and had a lot to do with federal-provincial program social service guaranteed annual income.

That is where I am coming from and I, obviously, am influenced in what I am about to say by that background. My starting point, I think, on Meech Lake is to look to its ultimate purpose. Quite clearly, its objective is to strengthen the bonds of nationhood between Quebec and the rest of Canada. That surely means to me that they are talking about the bonds of nationhood felt by the people of Quebec because this, after all, is the source of a sense of nationhood within Quebec.

The constitutional accord, however, does not deal with the bonds of nationhood in terms of citizens, it deals with them in terms of governments. The question therefore is whether the arrangements between governments embodied in Meech Lake contribute anything or much to the strengthening of the bonds of nationhood which are felt by the people of Quebec.

My answer is no, and I am going to spend some time telling you why my answer is no. I am really working from the submission that you have. The reason I say this is that, in my judgement, two bonds of nationhood have been weakened. The first of these is the shared right of Canadians to certain common public services--common programs like medicare, unemployment insurance, old age security, Canada pension plan. The Meech Lake seriously weakens the power of Parliament to establish such programs in the future.

The second of the bonds of nationhood which has been weakened, in my judgement, is the recognition by Canadians and respect for the national institutions. Meech Lake has weakened the national government in favour of the provincial governments and in doing so, I think, in the longer term it will weaken the relevance of the Parliament of Canada.

I am not going to be speaking, as you can see, to all the elements of the Meech Lake accord. I am going to be speaking essentially to two of them; one having to do with the establishment of national programs either by way of an amendment to the Constitution, giving to the national government the power to establish certain program; and the other, the amendment to the sections having to do with provincial powers--shared cost programs and the amending power.

The second part I am going to be dealing with is national institutions, having to do with federal-provincial conferences and the Senate and perhaps glancing reference to the Supreme Court.

Starting with the national programs, I will remind you--not that you need remind--that nearly all the national shared public services are the result either of a constitutional amendment or of the use of the spending power. Example of the constitutional amendment: Unemployment insurance, the constitutional amendment of 1941.

Old age security: When introduced in 1951, the Prime Minister of Canada,

Mr. St. Laurent, believed that a constitutional amendment was necessary. There were advisers in the government, I am assured, who did believe that the spending power would have sufficed but he himself wanted a constitutional amendment, and that was forthcoming. Then when the Canada pension plan and Quebec pension plan were being introduced there was a further amendment so as to make possible the introduction of disability in the Canada pension plan.

Example of the spending power are obvious to you all: The old age pensions, back in, when was it 1927?--I found myself wondering this morning exactly what year it was--moving towards old age security and guanteed income supplment; of course, disabled persons' allowance; blind persons' allowance; unemployment assistant merging together into the Canada assistance plan; post-secondary education arrangements; and, of course, hospitalization in 1958 and medicare in 1960. Meech Lake weakens both of these powers and spending. By providing that the provincial governments may, under certain circumstances, opt out of either constitutional amendment or new federal-provincial...

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by providing that the provincial governments may, under certain circumstances, opt out of either constitutional amendments or new federal-provincial shared-cost programs. We all know what opt out means, that even though you are a nonparticipating province you will be compensated as if you were a participating province.

I do not need either to say to you that the opting out idea has been on the constitutional table, in the federal-provincial table, for a very long time. It began shortly after Mr. Lesage was elected in 1960. And the notion of opting out was pressed really right straight through until the mid-1970s and of course then it took a rather different course. Instead of opting out progressively from federal-provincial programs and from constitutional amendments which would give the government of Quebec more power than the other provincial governments and the federal government less power--instead of doing that--the process was reversed in the eyes of the Parti Quebecois and the argument was, "We will start by separating and then we will reassociate. Souveraineté-association and we will end up in a position that will be even better than special status." When the referendum was defeated, we are essentially back to the special status argument and the special status argument turns on opting out.

Let me talk to spending power first. This is a long-established power. Not all of my academic colleagues apparently agree with me. But in 1937, as you well know, there was a reference regarding unemployment and social insurance act. The judicial committee of the Privy Council was quite clear. The dominion may impose taxation for the purpose of creating a fund for special purposes and may apply that fund for making contributions in the public interest to individuals, corporations or public institutions. Of course, the proviso is providing the arrangements are not so detailed as to be tantamount to legislation.

In constitutional practice since, I think it is instructive that the provincial governments have never challenged the federal spending power in the courts. There is, of course, currently, the ??Winterhaven Stables case which said the same thing as did the 1937 case, but that is under appeal. Besides, I am not a constitutional lawyer so I am not going to try to outguess any of the constitutional experts.

I say next that Meech Lake provides, however, that the provinces could now opt out with full compensation providing there is a provincial initiative or program which is compatible with the national objectives of the federal statute. That is not as innocent as it sounds. This notion of compatible is very different than the practices of the past. I will not go all the way back into the past, but medicare was clearly based upon the incorporation in the national statute of certain principles which were to be achieved and the provincial governments would be reimbursed for their medicare programs providing they adhered to those principles.

It is important to recognize that the word "principles" became a part of the vocabulary of federal-provincial relations because formerly, of course, we had shared-cost agreements. These were created by a national statute and by provincial statutes and it was under those statutes that a conditional grant agreement, was entered into between the two orders of government and those conditional grant agreements contained the conditions.

In 1960, Mr. Lesage had said, "We will never sign a shared-cost agreement again." Those of us who were involved had to find a formulation which would not require Mr. Lesage to sign an agreement. The answer was the incorporation into the statute of principles. And, of course, this word in the vocabulary of federal-provincial relations has been evident right straight through to and including the Canada Health Act.

~~Meech Lake did not use the word "principles." Meech Lake used the words "objective."~~

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~~word in the vocabulary of federal-provincial relations has been evident right straight through to and including the Canada Health Act.~~

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Meech Lake did not use the word "principles." Meech lake used the word "objective," and objective is different than principle. The objective is the object of an action. A principle is a fundamental attribute or an essential characteristic. More than that, the word "compatible" is the government of Canada will reimburse the provinces providing they have a program or an initiative which is compatible with the national objectives.

The word "compatible," what does it mean? In English, of course, it means capable of existing alongside of, or it can mean consistent or accordant or congruous. In French, however, ?? "compatible" means only capable of existing alongside of.

What it comes down to is that Meech Lake says that a province may opt out simply by having a program or initiative which is capable of living alongside of something called a national objective. In effect, I am suggesting to you that the fathers of Meech Lake deliberately decided not to use the word "principle" and chose a vaguer word. I cannot of course attest to that in personal terms.

Let me say something about the amending power now. The Constitution Act of 1980 provided that sections 91 and 92 could be amended with the assent of seven provinces representing the majority of Canadians with the proviso that where the amendments involved culture or education a dissenting provincial government, one which dissented and continued to dissent from the amendment, was entitled to full compensation from the government of Canada.

Meech Lake extends this opting-out principle to any amendment to the provincial powers which really means, of course, that--I am speaking as if I were a deputy provincial Treasurer still--a provincial government has an incentive to try to be one of the three dissenting provinces. That is a little bit of a complicated checker game in federal-provincial relations, but there is an incentive to that. I just love getting cheques for nothing. It was a whole lot easier to deal with reallocation with cheques with no conditions than to impose taxes.

Mr. Breaugh: I know the feeling.

Mr. Johnson: You guys know it better than I do. You have to get elected.

There is a disincentive, of course, for the government of Canada to even embark upon this rather tortuous road. Some people have said to me, "Well, does this really matter?" this Meech Lake provision concerning the amending power or for that matter the spending power. I say, "Well, perhaps we should ask ourselves whether we, as citizens, are better off as a result of the Meech Lake provisions?" Maybe that is the fundamental question. Are we, as citizens, going to be better off in the future?

An even more instructive question it seems to me would be this one. Would you, the fathers of Meech Lake, have been prepared to make your

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provisions concerning national programs retroactive? Would you have been willing to make them retroactive? Which is to say that medicare would be ruled out, hospitalization would be ruled out, Canada assistance plan would be ruled out, etc.

Even prospectively looking ahead there is the question as to how we are going to go about the difficult question of creating new rights and benefits of nationhood for the citizens of Canada in programs such as home services for the old and disabled. I can say this. I have white hair. This is going to be a real issue for every treasury in the country. And we are going to have to find a way solving it. We have a problem, I think, now of what is child care. I am glad I am not involved in trying to define the shared-cost arrangements or whatever they are going to be in respect to child care. Legal aid, legal services in a more litigious society. All right. Enough. That is what I have to say about national programs.

~~Let me talk about~~
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~~legal services in a more litigious society. All right, enough. That is what I have to say about national programs.~~

Let me talk about national institutions for five minutes. My generalization is that Meech Lake means that the erected institutions of the national government would be limited or constrained in the exercise of their powers by empowering the provincial governments or their delegates to interpose their views at strategic points in the national or federal decision-making process.

This is accomplished essentially in three steps. Step 1, you constitutionalize the federal-provincial conference of first ministers. Innocent looking enough. The conference of first ministers already exercises a great deal of power, particularly when their conferences are televised. I think Meech Lake should have dealt with the question of televising of first ministers' conferences. Ask an elected member of Parliament whether he or she thinks they have as much power as the first ministers in the face of the new institution of the televised federal-provincial conferences. I would say they would say checkmate to the elected House of Commons.

Step 2. You transform the Senate into a House of provincial delegates. The Senate is effectively appointed and nominated obviously by the provincial Premiers. Meech Lake does not say this, but this is quite clear. The Senate retains for veto over the government of Canada and over House of Commons legislation. Meech Lake legitimizes and appoints its Senate by presuming or at least partially legitimizes it by turning it into rather a more "representative" body in respect of the provinces.

Now is it drawing too long a bow to suggest that? If I were a premier, I would know when I was dissenting from some proposition the government of Canada was advancing at a federal-provincial conference and I could not win there, then I might be able to say, particularly if I were Premier of Ontario, "You know, we can always go about this a slightly different way. We have a House of provincial delegates and your propositions can be defeated there." Another kind of checkmate to the government of Canada, the elected House of Commons and a checkmate to the electorate because the Senate is not going to be elected.... We have a double majority, the House of Commons and Senate. We have also created a situation where we cannot have an elected Senate.

I want to conclude on a very personal note. I am a Saskatchewanian. I have known from the time of my first political consciousness that we had no power in Ottawa. We have 14 seats in the House of Commons out of 282. We do not have a much better representation in the Senate, which does not matter anyway, it is appointed. I mean it does not matter now. I learned all the mythology of the west as a boy. Hate the east, hate Toronto, hate the railways, hate the banks, hate the elevator companies--do you want more? You know it all.

Interjection.

Mr. Johnson: It is all very well, but this mythology finds its roots in powerlessness. It seems to me we have the choice in this country either of addressing ourselves to the mythology or to the roots of the mythology. I do not think the mythology is going to go away until we address its roots. I think in this country it is profoundly important to address the roots of...

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discontent because we cannot go on

hoping that by a dib here and a dab there that satisfies governments, some industry or interest group that we somehow or other are going to appeal to the Canadian people to feel some sense of identification with the nation as a whole.

1110

That is at the heart of everything I am trying to say. In the final analysis, Meech Lake's flaw is that. It did not consult the interests of the citizens in national programs and in national institutions and that it does not address itself to the broader issues of the nation, including obviously the question of Quebec's identification with the Constitution but including as well the other roots of discontent in the country.

Mr. Chairman: Thank you very much. We have your full text as well to refer back to in a number of the areas that you raised and you have raised many questions that I think certainly we have been struggling with. I will move right to questions with Mr. Breaugh.

Mr. Breaugh: I have a couple of areas that I wanted to pursue with you because I enjoyed this little session this morning. I think we are kind of getting at some of the basics of it all.

The first area is, one of the things that I see in this is a recognition that we are shifting the power balances in the country around a bit. I do not see it as being a lot or anything to get alarmed at, but there is a recognition here that we have some of our provinces now that are big, population-wise, in terms of services, in terms of level of government, and they are not going to sit around and ask the federal government for permission to do anything any more. If Ontario, Quebec or many of our other provinces want to do something, they will proceed to do it.

The difficulty in this country is that we will continue to have for a long time provinces, which do not have that kind of resources, which have a population of less than an Ontario city. All of this keeps changing. The ??demographics of the country changes and the economics of the country changes. I see in Meech Lake something of what you spoke to, that there is a recognition that the House of Commons is the sole source of power in the country. People in Saskatchewan are never going to be able to dominate that agenda. Meech Lake is an attempt to kind of shift that so that the provincial government has a little more power.

The American way is everybody runs their own agency to do this. There will be nine different agencies controlling drugs in the streets. Then typical of Canadian manner, in this city now there are only four publicly funded police forces that I am aware of that are operating in the city of Toronto. There are a few dozen private agency things. A couple of dozen other countries have their agents popping around the city, but we try to kind of work out some negotiated arrangement about who does what. We share the costs and we share the responsibility. Basically, we make the effort to try to plan that out.

What is in the shared-cost programs, the national objectives and all of that, I read most of that to be an attempt to put in a more formal way what we have done in this country that we know works. We could lie to people and say, "If you live in Kapuskasing, you have the same right to hospital care as if

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you lived on Wellesley Street in Toronto." We could put that lie in the Canadian Constitution, but unless we intended to build six high-tech medical institutions in Kapuskasing, we could never produce that. We have said we will not do it that way.

There is something kind of typically Canadian about the Meech Lake accord in its attempt to kind of grapple with that. I do not see that as being a bad thing. I appreciate that there are a lot of others who disagree with that immensely, but I really see that as being an attempt to grapple with the realities of this country, which is a very awkward piece of business to try to govern. I would be interested in your response to that.

Mr. Johnson: Two comments. First of all, on the disparate size of the provinces, I personally believe--if I understand you correctly, I am agreeing with you--that there must be flexibility in Senate representation in the future. I know what that means for the government and the people of Ontario. It would mean smaller relative proportion of elected senators than from the smaller provinces because the whole idea of Senate reform would be to give us a stake in the Parliament of Canada. That is why I am uncomfortable about Meech Lake because it says "from here on--"

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(Mr. Johnson)

...than from the smaller provinces, because the whole idea of Senate reform would be to give us a stake in the Parliament of Canada. That is why I am uncomfortable about Meech Lake because it says "From here on in, unanimity." It makes me, as a ??Saskatchewan ??--we have no more flexibility left to look in that direction.

Your second point, again, if I read you correctly, has to do with the relative power of governments to do things. I frankly think from my experience in the government of Saskatchewan--we were a poor province when I was working there. We had a per capita personal income well below the national average--I believe that provincial governments can take initiatives under the present Constitution. There is no problem. We had all the constitutional powers we needed, and then some. And with an equalization formula now that virtually guarantees to every provincial government an average per capita revenue from average levels of provincial taxation--that is what the equalization formula does--there is a fiscal capacity that, while not commonly spoken about by people like Mr. Peckford, is there. It is a very generous formula. One of the things may I say that I remarked on at the time of very generous arrangements being made, there was never a whisper of dissent from the province of Ontario. Never. No matter what premier. I come to the conclusion that the provincial governments have abundant powers. There is a fair equalization formula, and indeed that has been guaranteed in the Constitution.

The sole remaining question is whether there is going to be a relative equality of rights of citizens of access. That is the issue of Meech Lake. It is not, as you say, that we are going to have an opera house--I used to say to a premier in Saskatchewan who really believed in equality, "Look, we are never going to have an opera house in Bigger, but let us try to equalize the rights of citizens somehow." Excuse me for being so long.

Mr. Breaugh: I just want to pursue one other thing because I note that if you conclude by attempting to access some of the roots of the flaws in this accord--I really think that is what has happened here, and maybe it is a good thing. Meech Lake may be the kind of cornerstone whereby the Canadian people say: "The process that has been used to come to this agreement is intolerable. From this point on, it cannot proceed to change the Constitution of a nation by means of secret meetings, private negotiations between bureaucrats."

When you come right down to it, the critical decisions were made in private and then there is an attempt to bully everybody else in the nation to say, "You must all accept it." I do not believe that that is going to fly any longer. My assessment is that part of what the suspicion and the aggravation about Meech Lake is just very simply that if they had had the brains to open up the door and let people see what they were trying to do, there would not be as many angry citizens out there.

I would be interested in hearing your comments about how we move in a Canadian way to alter this process. I guess most of us would agree with the idea that if we had had this long series of public hearings in every legislature across the country and we had all shipped our proposals off to Ottawa and the first ministers had sat down and said, "Here are the ones we can agree with," we would all say we had our input, the legislatures had their say and they simply finalized the agreement. I do not think very many of us

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would have an argument with that.

We get a little upset when the shipment is sent the other way--

Mr. Johnson: Yes.

Mr. Breaugh: --and your not allowed even to question the process.

Mr. Johnson: Two short reactions: I agree with you. I do not think the constitution-making of 1864 at the Charlottetown conference, which set a precedence for our constitution-making up until now, is going to work any more. To believe that it could is almost silly; 1864 is a long time ago.

Second, I think the way of doing it is precisely the way you mention. I wish that the fathers of Meech Lake had said: "Here is our agenda. Here is what we are trying to accomplish, and we are going to send this to legislative committees across the country and they are going to have their hearings and they are going to arrive at certain conclusions. This is not a referendum. It will not absolve the Prime Minister and the 10 premiers from their responsibility to make a decision, but it will clearly--

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(Mr. A. Johnson)

~~... Prime Minister and the 10 premiers from their responsibility to make a decision, but it will clearly illuminate their decisions and influence them.~~

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Mr. Breaugh: Thank you.

Mr. Cordiano: Supplementary, Mr. Chairman, very briefly, and I will not ask a question afterwards.

Mr. Breaugh: That is how he gets his questions in.

Mr. Cordiano: I might as well leave if I cannot ask a question. About this question on process, the whole fact is that--have we ever done it any differently?

Mr. A. Johnson: No.

Mr. Cordiano: Exactly. So we are talking about treading into a new area now, and probably a new--

Mr. A. Johnson: Slightly differently in 1988.

Mr. Cordiano: Well, variations. Essentially, you had the leaders of each province or the premiers of each province and the Prime Minister or the federal ministers.

Mr. A. Johnson: But you did have a joint committee in the Senate and the House of Commons.

Mr. Cordiano: In the House and the Senate. Yes. But what I am saying is that essentially it was a small group of people without too much public participation determining the fate of the Constitution of this country. I do not think it has ever been done very differently. What we are talking about is establishing new processes we in this country perhaps begin--to become involved in an evolving Constitution, greater public awareness, greater public participation. It is something new. I think we are on the cutting edge here if we can come up with a process whereby it enhancing the average citizen's awareness and allows for the opportunity to participate in constitution-making. That is something new.

Mr. A. Johnson: Yes. I agree with you. I do not know how practical this is. One of the wonderful things about being retired from the public service as a practitioner is that you do not have to be as responsible in your advice as you had to be before.

Mr. Cordiano: One of those interesting ideas.

Mr. A. Johnson: I think it is a very nice question and I would be raising this if I were advising a minister. It is a very nice question as to whether, even now, it would not be possible to suggest that before the final ratification by the legislatures, the premiers and the Prime Minister would meet to consider in some digest form the questions that have been raised by the several hearings across the country, no commitments, but to consider them,

maybe to answer some of the key questions, maybe just a little short agenda of questions. "Just tell us, just tell me as a citizen...." Second, I would be saying, and this I think they ought seriously to consider, that they amend the Senate--they have their constitutional discussions about the Senate before Meech Lake is settled.

Mr. Chairman: I have Miss Roberts, Mr. Allen and Mr. Offer.


Miss Roberts: Miss Roberts is always very brief. I enjoyed your poresetation. It was very helpful. There are couple of things I would like to indicate. If we are going to change the process, most likely it would be helpful if Quebec is in on the change in the process, and Meech Lake, of course, would appear to bring Quebec in. That is one comment. I enjoy what you have just said about their getting back together and discussing things. That would be very helpful.

The ot her comment I would like to make is historical. If I remember correctly, in the 1920s and 1930s and up in the 1940s--I do not remember all the 1920s, but in that era--

Mr. A. Johnson: I come a lot closer than you do.

Miss Roberts: The federal government took away some of the powers that might have been exclusively provincial, and we saw in the 1940s, the 1950s and the 1960s, where the federal government became more and more interested in areas that were exclusively provincial. I say to you that now that is changing. The provinces now are wanting back some of their own. I am talking a very political basis, that in the 1940s, 1950s and 1960s, we changed our country, very much so, made it much more nationalistic than we had ever done before, and now perhaps this generation, the people who were meeting there at Meech Lake, have a different view of Canada and a different way of moving. I suggest that that view may be the view of the future, whether it is right or wrong--

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(Miss Roberts)

~~Meech Lake have a different view of Canada and a different way of moving. I suggest that view is maybe the view of the future. Whether it is right or wrong, I agree with Mr. Breagh that I do not think Meech Lake changes it as much as a lot of people have led us to believe.~~

But I think we should put in perspective the fact that the national government took over so much in the 1940s, the 1950s and the 1960s with respect to spending. It is not that those programs were not necessary, but indeed maybe the spending power, what they have put in Meech Lake, is trying to constitutionalize what has gone on and maybe force everyone back to the table to rethink all the spending problems.

Mr. Johnson: Without being argumentative, I would put it to you that the redress has already taken place. What you say is quite true. Aside from the amendments to the Constitution--which I have spoken to and I will not repeat myself--there is no question about it, that in the late 1940s, the 1950s and the 1960s the government of Canada increased its cultivation of the tax fields. This meant that the federal proportion of tax revenues increased very markedly, relative to the provincial-municipal proportion.

That has been more than completely redressed. That is to say--I wish I had my numbers with me--the federal government revenues, as a proportion of total revenues now has gone back to what it was before. In other words, the provincial-municipal proportion has increased enormously. So it seems to me that if you look therefore at the Constitution as it exists, the endowment of powers is sufficient. I do not think any province has ever argued, "We don't have enough power," except Quebec in the "opting out" line.

Second, the balance of actual expenditures, and therefore, the real balance of power, if you want to put it that way, has been redressed very substantially, in historical terms.

I am really agreeing though with your basic proposition. There is no point in going back to the 1960s and saying that is the ideal time. Can I bootleg this in, Mr. Chairman, since I am not getting paid any royalties? I did a little history of social policy in Canada from 1945 to the present, all in 50 economical pages. It has been published by the Institute for Research on Public Policy. It is just kind of a useful guide. I was going to say, "catalogue," but I hope it is more than that. But you might find it interesting in connection with the question you raised.

Miss Roberts: I would appreciate that. Thank you, sir.

Mr. Chairman: Is that a copy you can leave with us?

Mr. Johnson: I can leave it with you.

Mr. Chairman: Fine, thank you very much. Mr. Allen and then Mr. Offer, and I am mindful of the hour.

Mr. Allen: Thank you very much, Mr. Chairman. It is a great privilege to have Mr. Johnson with us this morning both to present his own comments and to subject himself to our questions on this subject which he has been immersed in for so long.

Mr. Johnson: Thank you.

Mr. Allen: Could I ask you first of all, just quickly, vis-à-vis the last question, some people involved at the federal level of Canadian politics through the periods of the late 1940s, the 1950s and the 1960s have said that, notwithstanding the impression that a lot of centralization and national stuff was going on, in reality what was happening was immense growth in provincial responsibilities, powers and needs, which launched them into a much more powerful position, in effect, in Confederation. Is that also your perception alongside what was happening nationally?

Mr. Johnson: Yes, in a certain sense. The way I would put it is this. The government, with a small "g", was increasing very substantially in the 1960s and 1970s, and particularly, of course, in the social policy area. That increase of government with a small "g" involved both the federal and the provincial governments. When one was talking, for example, about shared-cost programs, there was no shift in constitutional powers to the federal government.

On medicare, to take the obvious illustration, the provincial governments remain in control of their medical care programs. The federal intervention, which increased federal expenditures alongside the increase in provincial expenditures, manifestly said just what I . . .

C-1130-1 follows



(Mr. ^{A.}Johnson)

~~provincial governments remain in control of their medical care programs. The federal intervention, which increased federal expenditures alongside the increase in provincial expenditures, manifestly said just what I have mentioned. If the provincial programs conform with the four principles, now five, under the Canada Health Act, then the people of Canada through the government of Canada, will support those programs.~~

1130

So there was a parallel growth. What was happening in the 1950s and the 1960s, however, in terms of this relative balance of power was that the increases in federal tax that had taken place earlier on rendered extremely difficult politically the increases in provincial taxes that had to go alongside of this concurrent growth in the exercise of power.

Mr. Allen: OK. Second, I am not sure just how far you are pushing us this morning. Are you suggesting that we, for example, report that we have these problems in the accord at a number of levels and that we, as a committee, recommend that the Legislature pay attention to those and make some requests in that respect, but that none the less, the Legislature ought to endorse the accord, in the hopes that the premiers would return to the table, as you suggested, and at least look at them?

Or are you suggesting that we should take what, from some perspectives, is the more dangerous course with regard to the incorporation of Quebec, and reject the accord as it stands? Should we recommend that to the Legislature and let the Legislature reject, and in that respect, try to force the first ministers back to the table to do the reconsidering? What is your sense on that?

Mr. ^{A.}Johnson: Number 1, reject, no, that is not my view.

Mr. Allen: No.

Mr. ^{A.}Johnson: Number 2, create another occasion for the review of some of the central issues that are raised, yes, that is my view. Number 3, the firmest of my positions--I mean I believe in the second. How practical it would be in the current context is for the elected politicians to judge. I am not averse to saying what I think, but I have done that.

Number 3, the bottom line, in my view--and I am not saying this would make some of the participants in Meech Lake happy--I would say two things. I really do think seriously that, along with number 2 or without it if you reject it, you ought to look seriously at the amending power, that is to say, the amending process for future amendments. Why not at least consider the inclusion, in the Meech Lake amendments, of a process under which you would not alter if they are unwilling to alter the formula for amendment--change the process so that legislative committees, etc. would have the hearings and so on? That is the (a) of my point 3. The (b) I stick to, which is to say, since you promised to review the Senate anyhow, review it before you finalize Meech Lake.

Mr. Allen: So that then you do take very seriously the consequences of a rejection?

Mr. Johnson: Yes, I do.

Mr. Allen: In terms of what might follow ??.

Mr. Johnson: A flat rejection is just not in the cards. It should not be in the cards.

Mr. Allen: Yes, I see. Thank you very much.

Mr. Chairman: Mr. Offer.

Mr. Offer: I would like to carry on with that point, and it deals again with the process. You are saying "no" to rejection, yet to deal with, to direct our minds to how this whole process with respect to some of the concerns which we have heard ought to be dealt with, I am wondering if you ??could expand a little bit, from your vast experiences, as to how that process could be.

What type of process ought to be considered by this committee, because you know that we are talking on one hand, of course, about constitutional reform and the particulars of what is in Meech Lake? We are also talking, on the other hand, as to how those particulars came into being and what might happen in the future. You certainly have a vast amount of knowledge with respect to the whole question of dealing with this particular reform.

~~You have indicated previously that what happened at Meech Lake~~

C-1135-1 follows



~~... amount of knowledge with respect to the whole question of dealing with this particular reform.~~ You have indicated previously that what happened at Meech Lake is not very much different from what happened in--

Mr. Johnson: In the process.

Mr. Offer: --years gone by with respect to process, but my feeling is we now have a Charter of Rights and Freedoms and people are much more concerned. They are much more aware. It is a growing concern and a growing awareness as to this type of Constitution and how it will impact upon their day-to-day living.

Mr. Johnson: Yes.

Mr. Offer: I think, from my perspective, it is becoming very clear that people are demanding that there ought to be some sort of process in place for future discussions revolving around the Constitution.

Mr. Johnson: Yes, and I will try to address myself to both of those. First, the process as I would like to see it unfold before Meech Lake, I have mentioned that I think it would be a good thing for the premiers and the Prime Minister to say, "Yes, before ratification we will do..." X, Y, Z. I will not repeat myself. Quite clearly, what would be involved if the Prime Minister and the premiers--particularly the premiers of the three provinces where legislative ratification has already taken place; legislative confirmation--were to say, "No, we will not do that," lies within their power.

All I am saying, in ??another way around, is: "Is it really wrong for us to ask you to be a little bit more flexible? Before you make up your minds, just listen. You still have the same powers of confirmation or ratification or otherwise and it may very well be that the answer to you and the answer to me as a citizen is, 'No, we have made up your minds and there is just no way we are going to do that.'"

Then my fallback position would be just the same as yours: "All right, if you will not listen to us now, will you at least, by yourselves, have another secret meeting at Meech Lake and in that secret meeting come out with a reformed Senate and come out with a new process for the future?" If they say no to that, so be it; they have said no to it.

Mr. Offer: This whole question of the secret or closed meetings and things like that, I really do not know if I am that uncomfortable. I think in your first couple of pages you have also alluded to the fact that you are dealing with areas that are very sensitive and there is room and there is need in many ways-- In our lives there are many examples where we do deal with areas of great sensitivity. With respect to the whole format in this area, it could be argued that there was ongoing discussion I think you spoke to--

Mr. Johnson: Yes.

Mr. Offer: --with respect to this whole Quebec ??round--

Mr. Johnson: The previous ?? did, yes.

Mr. Offer: --that there was the Meech Lake accord and that there was

a second meeting that came out with the Langevin agreement. The first ministers have signed that. Are you suggesting that the process could be improved, that even if we kept all of those stages in place these hearings would commence across the country at, of course, the discretion of the Premier? I imagine they always have that discretion and how they use that discretion is certainly for them alone, and then report back to the Premier for final ratification.


Mr. Johnson: Yes.

Mr. Offer: Is there something terribly wrong with any Premier or first minister, first--and I am asking from your experience--having these meetings of a sensitive nature in private and, second, saying, "Yes, I agree and I believe in this agreement, I have signed my name to it and we are now going to have public meetings on this, but I want the people--of the particular province or country--to know where I stand on it"?

Mr. Johnson: Yes.

Mr. Offer: What is so wrong with someone saying, "This is what I happen to believe in"?

C-1140 follows.



~~Mr. Offer:~~

~~.f. going to have public meetings on this, but I want the people--of the particular province or country to know where I stand on it."~~

1140

~~Mr. Johnson: Yes~~

~~Mr. Offer: What is so wrong with someone saying, "This is what I happen to believe in?"~~

Mr. ^AJohnson: Secret meetings are absolutely essential on most things in government. Goodness gracious, most of the things that went on in federal-provincial relations over the years, the decisions really were taken in secret. There is no point in pretending about that. For example, if you will forgive one personal illustration, when we arrived at the notion of principles for the ??medicare act, we did not have a great big public consultation about it. It was ??Claude Morin and I sitting in a hotel room talking about what would work and I had put to him this possibility of principles.

When the governments of the provinces made their decisions concerning medicare, they did not not have public meetings. No, no. I agree with the secrecy of government in the difficult decision-making that is going on. I clearly did not make myself clear about this, but what I am arguing for is a kind or prepolicy stage, if you could put it that way. I think society has changed so much that what I knew as a public servant for 30-odd years is just a little bit out of date and that what we need is this prepolicy stage where the citizens at least feel that they have had a chance to have their say, and then the secret meetings start.

You can use exactly the same process if you want. I do not want to leave the impression that I think in a town meeting, as the Americans used to have and I guess still do have in New England, you are going to make policy. You are not going to do that. That is not ??on. So I am agreeing substantially with the principles or the direction of your thinking, I believe.

Mr. Offer: I would like to carry on with that. I very much appreciate your thoughts and your positions on these matters. You have come with a great deal of experience and it is certainly going to be very useful in our ??deliberations.

Mr. ^AJohnson: I got a lot of bruises anyway.

Mr. Offer: You guys know what you are talking about.

Mr. Chairman: Despite the bruises, we want to thank you very much for having come, not only for your presentation, the paper, but also the document which you indicated you could leave with us. I also think, in the answers to a number of the questions, you have set out some interesting ideas with respect to procedures, process and how to look at the accord in the predicament that I suppose, as a committee, we are in trying to come forward with a report that will be helpful. We very much appreciate the time you have taken to be with us this morning.

Mr. ^AJohnson: Thank you very much. The privilege was mine.

Mr. Chairman: If I might then call upon our next witness, Gordon Crann, if he would come forward. As you are undoubtedly aware, Mr. Crann, we are running behind, but that is not to say we are going to take less time in listening to you or asking questions. We want to welcome you as well here this morning. We have received a copy of your submission, so if you would like to make your presentation, we will follow up with questions. Please, go ahead.

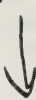
GORDON CRANN ASSOCIATES

Mr. Crann: To introduce myself, I am probably best known to you as a former political columnist at the Toronto Star. I used to write a column in the Sunday Star. In that role, I wrote a number of columns on Meech Lake so I would like to share with you some of my thoughts on Meech Lake today, although I am not going to try to compete with the academics that preceded me this morning and discuss Meech Lake in detail and discuss Canadian constitutional history.

I am going to take a little different approach by bringing some of the American experience to you and ask you not just to go back 120 years to Confederation, but to actually look at the similarities between the debate that is going on with Meech Lake here in Canada today and similar debates that went on in America 200 years ago when it was drafting up its constitution in 1787 and ratifying it in 1788.

As I point out in the brief, basically, although there is certain common ground in that everyone agrees that Quebec should be reconciled with the Canadian constitutional family...

C-1140 follows.



As I point out in the brief, basically, although there is certain common ground that everyone agrees that Quebec should be reconciled with the Canadian constitutional family, that the way the debate has progressed, there has been a certain polarization, so that you have two camps. Basically one camp is saying: "You cannot touch it. You have to ratify the agreement as is, or else the whole pact will unravel before us and we won't be able to bring Quebec into the accord." The other side is saying that there are fundamental flaws in the agreement and that it is a real threat to national unity here in Canada. In fact it would be better, even if it means keeping Quebec out of the constitutional family at this time--some of those people would maintain it might be even better to try to reopen it and change the accord now.

What I want to point out is there is a middle position here. This is actually the position that was developed in the United States 200 years ago. As I point out, there are a number of similarities. When you look at the constitutional convention that took place in Philadelphia from May to September in 1787, even though this was a convention where not just the heads of government got together and decided what was going to be in the constitution, but there were representatives from each of the states involved who were sent there. Even though it went on for four months, and not just the bargaining session that we hear a lot about with Meech Lake and a lot of criticism about, it still was criticized as being too secretive. The simple fact that the delegates to this convention were sworn to secrecy and word did not get out as to what they were proposing in the constitution until after they had signed the document and transmitted it to Congress--that in itself raised certain criticisms 200 years ago.

Because of the compromises that they had to reach--it is just like at Meech Lake, even though there is a lot of discussion beforehand--what came out was not what people expected. This is something that seems to be endemic to the process of negotiation between various political actors. The document that you have come up with is not the same as what you thought you were going to get when you go in to the negotiations.

Continuing on, again with another similarity. Congress quickly voted to transmit the draft Constitution to the states for ratification. There were five states that very quickly ratified the Constitution within a few months. It was not until Massachusetts, in their debate in January 1788, that we really saw that there was a fair amount of opposition. There were two strong camps, one called the Federalists, who were in favour of the Constitution and were urging it to be ratified without any changes, and the other called the Anti-Federalists, who raised a number of concerns but probably the primary one was that the Constitution, as drafted, did not protect American civil liberties. They raised the fact that the American Revolution had been fought over the protection of civil liberties of the citizens and that the Constitution was a threat to that. So again you can see certain similarities between the debate that is going on today and the debate that took place in America 200 years ago.

At Massachusetts, the first look at the convention showed that the Federalists were in the minority. It looked like the Constitution was going to be rejected by that state convention. But in a dramatic move, the governor of the state came in with a compromise. That compromise was to ratify the Constitution but also to propose amendments that would not be conditions on ratification, but would be suggestions for future constitutional action. After

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Massachusetts took this step, it is interesting that three other states, New Hampshire, Virginia and New York, also used what was becoming to be known as the "Massachusetts formula" to ratify the Constitution. All of them included recommendations that a bill of rights be constitutionally entrenched to protect Americans' civil liberties.

~~Actually the first 10 amendments to the American Constitution~~

C-1150 follows



~~All of them included recommendations that a bill of rights be constitutionally entrenched to protect Americans' civil liberties.~~

1150

Actually the first 10 amendments to the American Constitution are the American bill of rights. So this just demonstrates to you that it is possible sometimes, if certain conditions are met, that you do not have to reopen an accord that has been made on a Constitution, that there is the opportunity to recommend certain amendments and that through future process of constitution reform and renewal, those may be adopted at a later date. In the American situation, by 1791, only three years after the ratification of the Constitution itself, the first 10 amendments were in effect. So it was a very short period before those concerns that had been raised through the process actually came into fruition and became effective.

As I go on in my brief, I note that there are probably four lessons that you might learn from the US experience. One is that this compromise procedure is possible and it is possible for it to work, although there is no guarantee that amendments that are proposed in this way will eventually be adopted. I do not think any politician can guarantee that all the other constitutional actors are going to go along with whatever Ontario or any other province recommends.

If you sort of meet some of the conditions--and I point them out here--One is the amendments should have a couple of attributes. There must be a certain general popular support for it, so that political pressure is maintained after the ratification. In the American situation, this was the case because obviously Americans believe very strongly in a need to protect civil liberties, and that kept the pressure on so that the bill of rights actually took place just a few years later.

The other thing that you should note is that probably an amendment should not try to curtail directly provincial powers. The original American Bill of Rights only applied to the federal government. It was not until after the 14th amendment in 1968 that constitutional liberty protection was extended to state and local government action in the United States. So when the states voted in favour of an American bill of rights, they did not really perceive it as a threat to their own powers.

Obviously certain of the amendments that are proposed to you people that are concerned about the spending power restrictions and would like to see the federal government back to a pre-Meech Lake period in the freedom that they had to use federal spending power, people concerned about the appointment process to the Senate and to the Supreme Court of Canada--I am suggesting that those sort of amendments just will not fly. The provinces will be opposed and it really does not make too much sense to make those sorts of recommendations.

I guess my third point is that for an amendment to be successful afterwards, there has to be active support in more than one province. The fact that four out of 13 states supported the recommendations that there be certain amendments to draft up a bill of rights I think is key. In the Canadian context, you are probably looking at at least three or four provinces being required to actually put a serious future amendment on to the constitutional agenda in the near future. So that raises certain concerns that perhaps a

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province like Ontario, if you want to go this route, should consult with some of the other provinces that may have similar concerns to what you are doing. If there can be some sort of concerted action, then that raises the chances of future amendment being adopted and that it be given the serious consideration that it deserves.

The final point that I make is that compromise procedure itself can avoid certain long-term antagonisms that a simple, straightforward ratification without any recommended amendments sometimes produces. I point out that in Pennsylvania where the--

C-1155 follows



(Mr. Crann)

~~...a simple, straightforward ratification without any recommended amendments
sometimes produces~~

I point out that in Pennsylvania where the strict ratification was pushed through in a hurry--in fact, just a note to show you how far the heated debate went on both sides--at one point in the Pennsylvania convention, the federalists lacked a quorum and actually a mob went out and grabbed two anti-federalists that were in a hotel and dragged them to the location where the meeting was taking place and locked the doors after they were there so that the quorum was achieved. Now, I am not saying that sort of action is going to happen here. But just that illustration will tell you that the anti-federalists did not take their defeat very lightly when such tactics were being used against them.

It is interesting in both Virginia and Massachusetts where there were very close votes--the anti-federalists lost their opposition in trying to defeat the Constitution in those two states very narrowly--they took their loss very well. I am suggesting part of the reason for that may be the fact they knew at least their concerns were being addressed perhaps in the future in the fact that certain amendments were being recommended for future consideration.

I think in Ontario's case, that procedure may be one way you could help soften the blow to those who have concerns about Meech Lake instead of just ramming through ratification in this province without addressing some of the concerns, and trying to suggest the first ministers consider these in the future. It may be wise to try to address them in your recommendations. Also, it may be another way of perhaps addressing some of the concerns New Brunswick has raised, which seems to be the province most adamantly opposed to the Meech Lake agreement at this point.

I think with those comments, I would be pleased to answer any questions.

Mr. Chairman: Thank you very much. That is a very thought-provoking paper and I do not think we have thought of the American experience and linking to what we are about at this point in time.

We did have yesterday, with the Metis presentation, a somewhat similar approach in terms of using--I forget the term they used--but an amendment that would go forward independently. I think that is an interesting proposition.

We will begin the questioning with Mr. Eves.

Mr. Eves: Thank you, Mr. Chairman. Mr. Crann, you have stated in your last paragraph you hoped your presentation would be both informative and thought-provoking. I can assure you that it is both and you have certainly achieved that objective, as I am sure many members of the committee would agree.

I wanted to pursue a couple of points. Although I appreciate the point you make about recommending changes, for example, the chairman just alluded to Mr. Recollet who is the president of the Ontario Metis and Aboriginal Association here yesterday. He came at this from a somewhat different perspective. In his opinion, aboriginal rights will be put on the back burner

Mr. Crann

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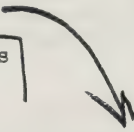
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by the federal government and provinces forever if the Meech Lake Accord is passed, before their concerns are addressed. This is why his group has come up with an idea of a companion amendment, which I must say is a very novel approach and one this committee has not heard of prior to yesterday.

My question would be, what does this committee, what response does it have to people like the aboriginal peoples who are not even included as one of the two agenda items on the next round of constitutional talks? The 11 first ministers obviously did not think enough of their plight as Canadians to put them ahead of Senate reform and fisheries in the next round of talks. What solace are they going to get from a supposed recommended change if the same 11 people did not even have enough concern to include them on the agenda for the next round?

C-1300 follows



(Mr. Eves)

~~What solace are they going to get from a supposed recommended change that the same 11 people did not even have enough concern to include them on the agenda for the next round.~~ Likewise, we have heard from Canadians from all three political parties in the Yukon and similar concerns expressed by Canadians from the Northwest Territories. They are concerned basically that they will have a somewhat lesser status as Canadians with respect to their rights to become provinces. They will not have the same right that other provinces have had, for example, the western provinces in 1905, which did not require unanimous consent of all other existing provinces. They do not have the right of nomination to the Supreme Court of Canada or to the Senate of Canada. I think what they are telling us in very blunt terms is that they somehow feel they are being treated as second-class Canadian citizens. What hope would a recommendation approach hold out for those people?

1200

Mr. Crann: Just to address that point, as far as the independent amendment proposed, I certainly would not be opposed to that, although I do not think it should be a condition of ratification here in Ontario. I do not think that Ontario should say, "Either you meet this condition or else we reject the accord." I think that would probably unravel the consensus that was reached at Meech Lake in the Langevin Block.

As far as what hope can we give to these various groups, as I said, I do not think that one province just on its own, no matter what it does at this point, whether it is an independent amendment or recommendation for future amendment, can guarantee that those groups' concerns are going to be put on the constitutional agenda and considered by the first ministers in the immediate future. Certainly I am sympathetic to those concerns, but I think that if there was a concerted action by three or four provinces--and when you look at the amending formula, the fact that it takes seven provinces representing 50 per cent of the population to pass any amendment, even those that do not require unanimity in the Constitution--if you had three or four provinces, that certainly would make the other first ministers take notice of their concerns, and they would have certain bargaining power and a certain way of ensuring that those groups' concerns were put on the constitutional agenda in the near future.

Mr. Eves: My last point, I think those concerns that have been expressed by those groups can only be addressed by specific amendments to the accord and it is probably not very realistic that is going to happen.


There is, however, one concern that many groups have expressed before the committee, and that is the question of equality rights and section 16 of the accord and, for that matter, any other rights under the Charter of Rights and Freedoms. We have had constitutional experts and lawyers on both sides of this issue, so I think it is safe to say that it is at least ambiguous or uncertain, if you will, what effect, if any, section 16 has on those rights. We have heard enunciated by just about all, if not every one, of the 11 first ministers that it was certainly never their intention, by the language of section 16, to in any way derogate from or subject those rights to the accord or to have the accord or Constitution supersede those rights.

If that is what everybody means, and if it can be clarified by a very

simple amendment--or take my friend's suggestion, and one that was made by Professor Baines to this committee, by a Supreme Court reference on that one particular item, and they are all saying they mean the same thing, that there is some ambiguity of uncertainty of the language, the witnesses who have appeared before us with that point of view said it makes sense to clarify this before it is ratified, not have some Supreme Court decision five or six or 10 years down the road, tell us they are not of the opinion that it means what the 11 first ministers thought it meant after all.

Mr. Crann: Just to reply to that point, I think I have two replies. One is that if you are talking about trying to reopen the Meech Lake accord for this one single amendment, I am pessimistic once you reopen it that other sorts of items will not be put on the agenda and that it will reopen the whole thing. Once you reopen something like this, I think there is going to be great pressure to have all sorts of amendments, and I do not think you can narrow it and isolate it down to just this one amendment...

1205 follows



(Mr. Crann)

~~... all sorts of amendments put on, and I do not think you can narrow it and isolate it down to just this one amendment.~~ As far as it being a condition of ratification, I do not think that would work.

As far as the reference to the Supreme Court or to the Ontario Court of Appeal, there are two concerns that I have with that. First, my understanding is that any reference would just be an advisory opinion of the court and not be actually a binding decision of the court. That is my understanding of the reference procedure. The second is that such reference procedures are difficult in that there is not a fact situation usually before the court, it is almost as though a hypothetical question of law is being put to the court for their clarification. I do not think that those preclude the use of that sort of a feature, but I think that it cautions against using it in situations that perhaps you are looking for more than what the court can give you in their advisory capacity. I do not know if I am clear on that, but I just want you to realize that I am not ruling out that procedure, but there are certain qualifications you have to realize in anything like that.

Mr. Eves: I agree. I think every witness has said that there is no doubt that you could not pose all kinds of situation to the court, but I think you could be quite concise and narrow and ask the court a very simple question: Does section 16 of the accord override the rights in the Charter of Rights and Freedoms? Yes or No. I am sure the court's decision is not going to be yes or no, but I think the question could be put that succinctly, if you will. I can tell you that some of the women's groups that have appeared before the committee are most adamant about this. Certainly the matter should be clarified before it is ratified by all the legislatures.


Mr. Elliot: I would like to thank you very much for coming and making an excellent presentation, particularly because we are in a real crunch in constitution building in Canada. You are one of the few people who have come with a very definitive approach to a solution based on historical facts. This is very appealing. My question has to do with perhaps extending your ideas a little bit in a certain way with respect to your proposal. Because of your background, you are obviously on top of the situation and probably have certain impressions about whether your proposal would be successful. My question is, do you think that the way everything has evolved to this point with respect to the accord that the climate is right for a proposal like your own to be successful in Canada at this time.

The reason I say that is, I think the decision-making process was, in law, quite correct, that gave us the present accord that we are pursuing, but because of the fact that there was a lot of citizen involvement and group involvement in the charter prior to it being carved in stone, I think that has whet the appetite of the Canadian people. They are demanding, if I am hearing the group correctly, that kind of involvement on a continuous basis. My concern is, in your opinion has the leadership heard that demand?

Mr. Crann: I think the leadership has heard the demand from the organized groups that have been making presentations. I also think that the fact that at this point New Brunswick is a real question mark, and whether they will come along and ratify the accord, will just increase that pressure as the process goes on. Something like what I am proposing may be down the road, the solution that everyone is looking for to bring the consensus together and to finally approve and adopt the Meech Lake accord.

Mr. Allen: I appreciate the fact that Mr. Crann has come before us this morning. While he noted his credentials as a representative of a consulting firm on the one hand, and as a former journalist on the other, he did not tell us that he also had been rather heavily immersed in politics in the city of Toronto for a few years, and ran provincially in a very impressive campaign in York East. Some of us were unhappy that he did not come to the Legislature at that time, and we now see what we missed. ~~We would have had a different kind of input.~~

1210-1 follows



(Mr. Allen)

~~... years and ran provincially in a really impressive campaign in York East. We were unhappy that he did not come to the Legislature, some of us, at that time, and we now see what we missed.~~ We would have this kind of this input in the Legislature had he been successful.

1210

Mr. Breaugh: We would really be out of work.

Mr. Allen: I think there are many tangents that one could follow up, Mr. Crann, with respect to your presentation. I just wanted to note, in passing, as a conclusion to our discussion that while you did not mention that the Federalists were led by somebody by the name of Hamilton. I am glad to see you inject to the Hamiltonian side of the whole thing into this consideration of Meech Lake.

Mr. Chairman: That is one Hamiltonian you would not necessarily have felt at home with him.

Mr. Allen: That I would not necessarily have felt at home with, that is quite true. Mr. Hamilton did not entirely agree with Mr. Jefferson, with whom I have normally sided in most of these matters. That is the end of my comment.

Mr. Chairman: I do not know whether to ?? We have been able to work in many American references in this last presentation. We may have to make comments.

I think there was one other witness. I think it was ??Stephen Duprés who talked about the Jeffersonian approach, so it is only appropriate that today the counterweight comes into being.

I know I speak on behalf of all the members of the committee. I thank you very much for taking a very unique perspective on the accord, and using another country's approach to a somewhat similar kind of problem. I think that has raised a number of questions in our minds. We are very grateful to you for coming and putting those thoughts before us.

Mr. Crann: Thank you. I appreciate the opportunity to be here.

Mr. Chairman: That concludes our morning session. We will begin again at two o'clock.

The committee recessed at 12:11 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

WEDNESDAY, MARCH 9, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)
VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)
Allen, Richard (Hamilton West NDP)
Breaugh, Michael J. (Oshawa NDP)
Cordiano, Joseph (Lawrence L)
Elliot, R. Walter (Halton North L)
Eves, Ernie L. (Parry Sound PC)
Fawcett, Joan M. (Northumberland L)
Harris, Michael D. (Nipissing PC)
Morin, Gilles E. (Carleton East L)
Offer, Steven (Mississauga North L)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Morin

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Greene, Dr. Ian, Assistant Professor, Department of Political Science, York University

From the University of Toronto Women's Centre:

Freeman, Lisa
Heskins, Valerie

Individual Presentations:

Shulman, Martin
Need, Roberta H.
Sloly, David

Palmer, Lynda

LEGISLATIVE ASSEMBLY OF ONTARIO
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Wednesday, March 9, 1988

The committee met at 2:04 p.m. in committee room 151.


1987 CONSTITUTIONAL ACCORD
(continued)

Mr. Chairman: If we can begin the afternoon session and if I could invite Professor Ian Greene of York University, Department of Political Science, to come forward and take a chair. Professor Greene, in addition to the paper which he will be presenting of which we all have copies, has also provided us with a copy of the Canadian Bar Association committee report on the appointment of judges in Canada. He had four copies which worked out perfectly so I have given a copy to each caucus and we will have one for the legislative researcher as well. We thank you very much for those. We thank you for coming this afternoon and if you would like to begin your presentation and following that we will get into a period of questions.

DR. IAN GREENE

Dr. Greene: To begin with, I would like to tell you why I was interested in making a presentation to your committee. I have only lived in Ontario for three years ...

C-1405-1 follows



~~if you would like to begin your presentation and following that we will get into a period of questions.~~

~~DR. IAN GORDON~~

Dr. Greene: To begin with, I would like to tell you why I was interested in making a presentation to your committee. I have only lived in Ontario for three years although I spent several more years here during graduate school in 1970s. I am a native Albertan and I am one of the many Albertans who has come to Ontario in part because of the economic crisis in the west. As Mr. Beer said, I teach political science at York University and I specialize in constitutional law and public administration.

I am a strong believer in the democratic process and citizen participation. When important constitutional decisions like the Meech Lake accord occur, I think that I have a responsibility to think about these issue and to try to contribute to the process. So I am delighted that you are holding public hearings and that you have taken the time to hear the views of so many people.

I essentially agree with the analysis presented at these hearings by Professors Russell, Hogg and Smiley. In fact, I owe much of my thinking about the Constitution to these three great Canadians. So I will try not to deal with the issues they have already dealt with.

What I will be arguing is that although the Meech Lake accord makes an important contribution to the creation of conditions for greater harmony among political elites in Canada, it does little to address some underlying problems of democracy. However, the results of the Meech Lake accord present opportunities to address some of these problems. My three recommendations are: (1) that a Senate nominating committee be established in Ontario draw up a list of names of possible Senate appointments for consideration by the Premier; (2) that an advisory committee be established in Ontario to propose candidates from Ontario for the Supreme Court of Canada; and (3) that a standing committee on the Constitution be established in the Ontario Legislature to consider important constitutional issues, to review significant judicial decisions on the Constitution, hold public hearings where appropriate, and make recommendations with regard to constitutional reform.

In spite of the positive aspects of the Meech Lake accord, it should not be overlooked that the process which led to the accord was a setback for the promotion of democratic participation in the constitutional process. Thus, it would be better for the health of the Canadian political system to regard the accord not as a completion of the constitutional process, but as an event which could trigger the beginning of a constitutional revitalization.

I would like to begin by sketching what I take to be the ideals of a democratic country, and then compare them to the reality in Canada today.

We political scientists describe Canada as a liberal democracy. I think it is worth while considering the thoughts of some of the leading philosophers of liberal democracy. Both John Stuart Mill and Rousseau were of the opinion that democracy could not survive without a high degree of participation by the people. For both these philosophers, participation meant something far deeper than voting at election time. According to Mill, political discussion has an

Dr. Greene

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educative function. Through political discussion, a person "becomes consciously a member of a great community," and learns a skill of finding solutions to general social problems, in contrast to purely personal problems. Rousseau stressed the educative value of citizen participation in decision-making. He felt that unless people had some experience in the making of general policy decisions, they would fail to realize the importance of the principle of the rule of law, and therefore might lose respect for the legislative process.

Both Mill and Rousseau emphasized the importance of citizen participation in decision-making not just at election time, but between elections through informed discussion, in local political institutions, and in the workplace. For both Mill and Rousseau, when basic changes to the Constitution are contemplated, citizen participation is especially important. It saddened me when I heard the Premier of Alberta announce that there would be no public hearings in that province on the Meech Lake accord. He said that in our system of government, we elect our legislators to make these kinds of constitutional decisions for us. Premier Getty's theory of democracy is dangerous. The election of legislators is just aspect of political participation. I agree with Rousseau and Mill, that unless a broad degree of political participation occurs in a democracy, especially when constitutional changes are taking place, democratic institutions will have shallow roots prone to being swept away during serious crises.

~~In Canada, we are far from living up to the ideals of democracy painted~~

L-1410-1 follows



(Dr. Greene)

~~... changes are taking place. Democratic institutions will have shallow roots
prone to being swept away during serious crises.~~

1410

In Canada, we are far from living up to the ideals of democracy painted by such philosophers as Mill and Rousseau. We are fortunate to have fairly high turnouts at election time for federal and provincial elections. We do better when there is some doubt as to the outcome, and we certainly do far better than the Americans. They will be lucky to get 50 per cent of their voters out at the next presidential election. On the other hand, we do not do well at getting voters out at municipal and local elections; and even at the federal and provincial levels only about 10 per cent of Canadians seem to be informed about and interested in what the parties consider to be the main issues of an election. Election outcomes are often decided by the least-informed 30 per cent of the voters--those who are easily swayed by slick advertising campaigns. Probably only about a third of Canadians have participated at any time in their lives in decision-making and organizations designed to solve community problems. Moreover, not many public or private organizations encourage meaningful participation in management decisions in the workplace, although this participatory management approach is becoming more popular.

There is obviously a gulf between the ideals of democracy and reality. The essential reason for this gulf is that democracy is a relatively new concept. Our ancestors lived for centuries under authoritarian regimes--except, it should be noted for our native-Canadian ancestors, many of whom lived in participatory democratic societies. There is a hangover from previous ages which has a tenacious staying power. Given that we think that the goals of democracy are valid--that it is important for individuals to participate in making decisions which affect how they conduct their lives--where should we be headed with respect to future constitutional reform?

I am assuming that the Meech Lake accord is a fait accompli, so I will be concentrating on the agenda which the Meech Lake accord has set for future constitutional change.

First, Senate reform: I think it is important to keep in mind how Senate reform became an issue. During most of the years of the Trudeau government, there were very few Liberal MPs elected from the four western provinces so the western provinces had little representation in the federal cabinet. This greatly annoyed westerners, but not enough to elect more Liberals. In 1981, the Canada West Foundation, which is a western policy research organization, produced a report on western representation which recommended an elected Senate with equal representation from all provinces and with effective legislative power to address regional issues. The Senate would be elected through a system of proportional representation so that all parties with a significant following would likely end up with some degree of representation in the Senate. The Senate therefore would provide some cabinet ministers, no matter was in power. This idea of the so-called "triple-e" Senate caught on and some western premiers became committed to it. The concept, as you know, became a bargaining tool during the Meech Lake accord negotiations. Senate reform was agreed to in return for the western premiers' acceptance of the "distinct society" clause. Because no agreement could be reached on the exact

form that Senate reform would take, an interim agreement was reached, which you all know about.

The idea of an elected Senate of the sort proposed by the western premiers has some merit. When I lived in the west, I supported the concept; now that I have moved to Ontario, I have changed my mind.

Mr. Chairman: We all can grow and develop.

Dr. Greene: The reason I have changed my mind is that I think that the hopes which some westerners place on an elected Senate may be too optimistic. I think what may happen with an elected Senate, power groups would form. Western senators would be one group and Ontario and Quebec may be another. The Maritime senators would be the power brokers and things may not turn out as westerners would hope. I think this will cause increasing disillusionment with the political system rather than more acceptance of it.

I think another problem with an elected Senate is that it tends to stress the idea that voting is the only legitimate form of participation in democracy.

I think the solution to this problem lies in electoral reform in the House of Commons rather than in the Senate. I do not have time to go into that here because of time constraints, but I have some ideas in my presentation notes.

(C-1415-1 follows.)



(Dr. Greene)

~~I think the solution to this problem lies in electoral reform in the House of Commons rather than in the Senate. I do not have time to go into that here because of time constraints but I have some ideas in my presentation notes.~~

I have been impressed by the way in which the current Senate has proposed sensible changes to the drug patent bill and to the two refugee bills. I think we would be better off in Canada with an upper House for sober second thoughts than without it altogether. The old method of selecting senators is clearly inadequate. The interim method, I think, is almost as unacceptable. It allows for provincial input into the selection of senators but it does little to guarantee the highest quality of appointments. One possible solution to this problem would be to establish a Senate nominating panel in each province. Such nominating panels could be composed of representatives of some of the major interest groups in the province, including labour, business, the professions, and so on. It would be important to include a representative of disadvantaged groups on such a panel, such as the poor, the unemployed and the handicapped.

It would be the responsibility of the nominating panel to create a list of the best-qualified candidates for the Senate. The list would then be presented to the provincial Premier, who would be required to choose from a name on that list and submit that name to the Prime Minister. Such a system, I think, would result in a Senate which would function much-more effectively both as a House of sober second thought and a House which would represent the diversity of the provinces in Canada. It would represent truly regional interests, not simply the interests of the provincial premiers. Because such a Senate would not be elected, it would not have the same political clout as the House of Commons, and therefore it would not be prone to creating standoffs between the two Houses. At the same time, it could have a very positive influence on the legislative process.

Perhaps your committee could consider recommending an experiment with this approach. An experimental Senate nominating committee could be established in Ontario. If the idea works, it might be picked up by the other provinces.

Concerning the Meech Lake accord and the Supreme Court, I think it is fitting that an institution with the importance of the Supreme Court should be granted constitutional status. Moreover, it is essential that both the federal and provincial authorities should play a role in selecting the judges to the court because, after all, the court is the arbiter between these orders of government. I have two concerns about the new process, however.

First, the process established by Meech Lake for the selection of Supreme Court justices is inadequate. I think it could easily result in low-quality patronage appointments, especially if the provincial Premier and the federal Prime Minister are from the same party. All I want to say here is that I completely agree with the remarks that Professors Hogg and Russell made to you, in recommending the suggestions of the Canadian Bar Association committee recommendations; and now you have copies of these.

I sincerely hope that your committee will recommend the establishment of such an advisory committee in Ontario. One positive aspect of this proposal is that it can be undertaken without a formal constitutional change. Also, it

Dr. Casene

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would encourage more provinces to adopt this proposal, I think.

My second concern is with regard to the effect that the constitutional status of the Supreme Court of Canada will have on our assumptions about the relations between the three branches of government in Canada. I am worried that we are giving constitutional status to the Supreme Court without thinking through what role we want the court to play vis-à-vis the other two branches of government.

Many legal scholars have assumed that with the Charter of Rights and Freedoms, 1982, legislative supremacy is dead. I think this conclusion is too simplistic. Even before the charter, we recognized a conventional set of civil liberties which was supposed to limit what legislators could do. The difference was that the legislative branch of government had the final say as to the meaning of the conventional civil liberties. Now, supposedly, the Supreme Court of Canada has the final say because constitutional amendments to change judicial interpretation are so difficult. This reasoning is based on the American model. I do not think it applies entirely to Canada. I think the process of amending our Constitution is much more straightforward than the American process, and I comment on this in my notes.

Furthermore, it seems to me that in situations where the wording of the Charter is not...

C-1420-1 follows.



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Dr. Greene

~~straightforward than the American process, and I comment on this in my notes. Furthermore, it seems to me that in situations where the wording of the charter is not an issue, that eight legislators could simply approve an interpretive resolution which almost certainly would be followed by the Supreme Court of Canada, so that the cumbersome process of actually changing the wording of the charter might not always be necessary.~~

1420

Back in 1981 when the charter was being developed, I was a skeptic about the charter because the Bill of Rights means nothing until the judges tell us what it means. Judges do not always interpret bills of rights as civil libertarians would want them to. However, our current Supreme Court is probably the most competent overall that we have ever had in this country, and I have been favourable impressed with most Supreme Court of Canada decisions on the charter. What has impressed me is that the judges have raised both theoretic and practical issues about the implications of specific civil liberties, such as freedom of religion, the right to security of the person, and so on, which otherwise might not have been raised, or might not have been raised for a long time. Such issues deserve further consideration by the other two branches of government.

I have also noted how the judiciary has sometimes referred certain issues back to the Legislature and the executives for further consideration. For example, with regard to film censorship in Ontario and abortion, the judges have, in effect, said to the legislators, "You have not thought through the procedures of what you are trying to do carefully enough. Consider the civil liberties issues more thoroughly and come up with a better set of procedures." Right now these kinds of issues are considered primarily by staff in provincial departments of the Attorney General and the federal Department of Justice.

What our political system is lacking is an effective method whereby the issues which the judges have raised can be taken up again by the legislative branch of the general public. Furthermore, from time to time the judges might interpret the Constitution in a less than desirable fashion. From my own perspective, I think the majority on the Supreme Court was wrong in not finding any protection of a right to strike in the freedom of association clause in the charter. I think that this decision will lead to a great deal of labour unrest in Canada, as it already has in Alberta. I think that the minority decision of the judges was better.

This kind of issue needs further consideration in the political process. It is unwise to leave the judiciary with the last word. Many, and perhaps most of the concerns that you have heard about the Meech Lake accord are worries about how the courts might interpret certain provisions of the accord. Ramsay Cook was concerned about how the "distinct society" clause might be interpreted. Mary Eberts was concerned about the potential erosion of women's rights. Quebec anglophones are concerned about the future erosion of their rights. Professor Hogg has tried to quell these fears, but in the end, no matter how clear the Constitution is, we do not know for certain what the judges are going to do with it. There is nothing sinister about this. Constitutions, by their nature, cannot be too specific. They need constant interpretation and reinterpretation. It is my opinion that this process of constant reconsideration of constitutional issues is likely to be the most successful from a democratic perspective, if it involves all three branches of

government, as well as the general public.

The judiciary plays a valuable and an essential role in constitutional interpretation, but I think the judiciary should not be the sole player or even the major player. I would therefore recommend the establishment of a permanent standing committee of the Ontario Legislature on the Constitution. This committee would be charged with the ongoing consideration of constitutional issues. One of the duties of this committee would be to review important judicial decisions on the Constitution and to consider the implications of these decisions. The committee would hold public hearings about some of the most important and critical issues, such as whether freedom of association should imply right to strike, in certain circumstances or the implications of a particular judicial interpretation of the "distinct society" clause. In this way the committee could encourage more public participation in the resolution of constitutional issues. If such a committee had existed before the Meech Lake accord was agreed to, we would not be in the bind we are in today: an agreement for important constitutional change and hardly any public input.

Because the Meech Lake accord is a fait accompli, there is a tremendous amount of bitterness and suspicion among certain groups. As I said earlier, the Meech Lake accord settles some long-standing disputes among the political elites in Canada. However, it has hardly touched the public perception, except in a very negative way. ~~The constitutional process.~~

1425-1 follows

(Dr. Greene)

~~...As I said earlier, the Meech Lake accord settles some longstanding disputes among the political elites in Canada. However, it has hardly touched the public perception except in a very negative way. The constitutional process has occurred without much public input for so long that most Canadians do not have a very clear idea as to what the Constitution means, and I realize this through teaching constitutional law at the university. The Constitution is becoming more and more a lawyer's document instead of a citizen's document.~~

Because the Meech Lake accord was announced as a fait accompli, this has caused the various groups which are concerned about the possible effects of the accord to take a very rigid position against the accord. In the eyes of the members of these groups, the legitimacy of the Canadian Constitution has been diminished. If broad public consultation had occurred before the premiers' meeting, I think many of the fears about the effects of the accord would have been allayed. Moreover, some of the imperfections in the accord, such as those pointed out by representatives from the territories, might have been corrected.

Another problem is that the accord is touted as bringing Quebec into the Constitution. What the accord actually does is to bring the majority of leading politicians in Quebec into the Constitution. I doubt very much if most Quebecers have thought about the accord all that deeply. If a pro-separatist government is elected again in Quebec, the pro-federalist forces will not be able to say, "Quebec has agreed to the Constitution." Quebec has not agreed; only a few politicians have. A constitutional change of this magnitude, if it is going to have the symbolic effect desired, at least needs broad public participation in its creation. Ideally, it needs public approval in the form of a referendum. If Canadians actually voted for the Meech Lake accord, such vote would be a much more important affirmation of the Constitution than the present process. How wonderful it would be if the majority of Quebecers voted in favour of our Constitution and the majority of the people in the other nine provinces voted in favour of welcoming Quebec into the Constitution.

Returning to the points raised by Mill and Rousseau, I think that the Meech Lake accord process has confirmed the fear expressed by Rousseau that without broad public participation in the constitutional process, many will lose respect for the law. Many Canadians have lost respect for our Constitution because they were excluded from participation in the Meech Lake accord process. Mill stressed the educative function of public participation. These public hearings are a great exercise in democracy, and I commend all of you for all your efforts and all your energy. One effect of the hearings is increased public knowledge of the Meech Lake accord. I think the educative process would have had an even greater impact if it had occurred before the premiers' meeting.

My final comment is that we have done the native people of Canada a great disservice by not agreeing to a constitutional amendment concerning native self-government as part of the Meech Lake accord. The native self-government amendment proposal was rejected at the constitutional conference last April because it was supposedly too vague. It seems to me, however, that the section of the accord which deals with immigration agreements is very similar to the kind of amendment many native groups want. In other words, if an agreement for self-government could be worked out between an Indian band and the federal government and the province, then the

Mr. Greene

agreement could be constitutionalized, just like an immigration agreement. If the relevant provincial government could be included, this would be great, but if not, it would not be necessary.

In the Meech Lake accord, we in effect made a statement that we are more concerned about immigration to Canada than we are about Canada's first peoples. I hope that your committee will produce recommendations which will lead to an early settlement of this very, very critical issue. Thank you again for hearing me.

Mr. Chairman: Thank you very much for your paper, which contains a number of very thoughtful suggestions. I am sure that everyone on this committee would agree in particular with your point about the educative process and the Rousseau and Mill aspects of how important public participation is in lending credibility to what it is you are trying to do. I think we have been very conscious of that lack in the process that has existed to this point.

Mr. Breaugh: I wanted to pursue something that I believe this committee is going to have to do and that is talk about process after we deal with the immediate question of the accord. I think you are right, and I think many of us are in agreement that it certainly would have been preferable if, for example...

1430 follows



(Mr. Breaugh)

~~dealing with the immediate question of the accord. I think, on the right,~~
~~and I think many of the people in agreement that it certainly would have been~~
~~preferable if, for example,~~ across the country legislative committees had
talked about and made public wordings, impacts, decisions and likelihoods, so
that we are able to build a consensus before the decision is actually taken to
put words into this accord which appear to have an impact on the Charter of
Rights and Freedoms.

1430

It would have been very nice to be able to say definitively, "It isn't
going to have an impact," or "Here is our estimation of what the impact is,"
and to do that on a large scale. I do not know how many members share this
concern, but I have some concerns that some rather learned folks have appeared
in front of us with some rather paranoid notions about what constitutions are
about and what courts are about. So I think that is part of our job.

But I specifically want to pursue a couple of other things that you have
talked about, one of which is the Supreme Court. I think all of us have to
recognize that its decisions now are having political impact of a kind that we
have not seen before in Canada. I was interested in flipping through again the
Canadian Bar Association's report on how to do that.

Do you think it is appropriate that--for those who have not looked at
this before, this talks a lot about qualifications, being suitable, being
vetted, and the committee and this, that and the other thing. But it does not
talk about what the Americans do, which is to say, "We assume everybody has
all of those qualifications when they walk in the door." What we are
interested in is what kind of a person is this? What kind of judgements will
we get from this person if we put him on the Supreme Court of the United
States?

Do you advocate that some process of that kind should take place, that
in addition to being moral and well qualified, both of which are really
difficult things to discern these days, somebody ought to go over nominees and
say, "Now if you were to give us a judgement on the impact of the Meech Lake
accord on the Canadian Charter of Rights and Freedoms, what would it be?" They
would get an assessment of whether there is a liberal judge being appointed
here--excuse me for using that kind of language--or a very conservative person.

But there is an obvious political impact on the appointment of judges. I
am not talking about electing them, but people are trying to make the
determination, "Is this person to the left or to the right?"

Dr. Greene: I am of two minds about that. That is an issue I have
not made a final judgement about myself. On the one hand, I think it might be
quite appropriate for a committee like this committee to interview the people
who were on the short list produced by the nominating panel and ask them
questions about how they might approach certain issues, so that you get a
judge who is broadly representative of the entire society, and not an extreme
right or an extreme left judge.

On the other hand, the reason this has not happened in Canada so far is
because judges, up until now, have not had the last word about the meaning on

the Constitution. If some of the suggestions that I am proposing are taken up, they will be part of the process in the future, but they will not have the last word. And so, we do not need to worry so much about their ideological persuasion.

I suppose I prefer to have a judiciary that is composed of people who are qualified and impartial, and we do not have to worry too much about their ideological leanings, because they are not important. They do not have the last word.


Mr. Breaugh: That is true, you see, and that has always been the Canadian assumption, that this is so nonpartisan it is just accident that Liberal governments always appoint liberals to the courts and Conservative governments just appoint conservatives to the court.

But aside from that, the thing that bothers me just a bit is that in Canadian politics I have never seen a time, as we have seen in the last month or so, when a decision reached by the Supreme Court of Canada in one fell swoop sends governments across the country reeling as to even what the appropriate reaction is to the decision of the Supreme Court. So our political system and our judicial process, which has always worked nicely and smoothly, and there were not any real jars in the system, has now had its first indication that there can be some very startling decisions made by the Supreme Court, which put governments from one end of the country to the other flat on their ??patoot, so to speak.

Is there a danger in that, because in essence that is the result of appointing a judiciary with no concern as to whether the judges are left, right or whatever. They will just be fair folks and they are well qualified, and their decision has nothing to do with politics anyway.

Dr. Greene: I will approach that issue from another perspective. From my perspective, there is no excuse for governments in Canada being caught off guard by that decision.

C-1435-1 follows



~~well qualified and their decisions have nothing to do with political~~
Dr. Greene: ~~I will approach that issue from another perspective~~
~~From my perspective, there is no excuse for governments in Canada being caught~~
~~off guard by that decision. I fully expected the decision that we got,~~
because the Criminal Code sections on abortion were so full of procedural
holes that I think the decision was predictable, especially when you consider
the other section 7 decisions of the Supreme Court of Canada.

If there had been a permanent standing committee of all legislatures in
Canada to consider these kinds of issues, governments would not have been
caught off guard and I think perhaps the various sections of the Criminal Code
would have been improved before the Supreme Court decision.

Mr. Breaugh: But the truth is they were, I would say, without
exception, caught unprepared, did not know what to say, did not know how to
react, and some of them still do not know how to react.

Dr. Greene: Yes. I think it is because we do not have an appropriate
mechanism for the judiciary, the legislature and the executive all to have a
part in constitutional interpretation.

Mr. Breaugh: OK. Thank you.

Mr. Chairman: Mr. Eves.

Mr. Eves: Thank you, Mr. Chairman. I want to thank you for a very
thoughtful presentation, and you have made, I think, three very specific
recommendations which I am sure the committee will take into account, at least
one of which has been suggested on several occasions, that being a standing
committee on the Constitution, which I think is a very good suggestion.

That deals with the process, I guess, from now and in the future. But a
few groups that have appeared before us have been somewhat more demanding of
the committee, if you will, in their approach. That is really what I want to
get down to, in terms of the question.

For example, on the last page you indicate that representatives from the
territories are not exactly pleased with several provisions--admission as a
province, appointment to the Supreme Court, appointment to the Senate, native
people of Canada--I too feel they have been done a great disservice with
respect to their pursuit of self-government and recognition of their rights.
They have argued before this committee that nothing less than a change to the
accord will give them their desired result. They also argue that if it is not
changed now, the likelihood of its being changed with the unanimous consent of
all governments somewhere down the road is slim--and none, in their view
anyway.

We have also had, of course, women's groups talk to us about their
concern about section 16 and their rights under the charter, and for that
matter, a lot of them have been a lot broader than that--anybody's rights
under the charter. They suggest that either section 16 should be amended or,
at the very least, this committee should recommend reference to the Court of
Appeal of Ontario to determine that issue.

Donald Johnston, the federal member who was before our committee recently, agrees almost exactly with your stand that Quebec has not agreed. Only a few politicians in Quebec have. He recommends nothing less than scrapping the entire Meech Lake accord and going back to the drawing boards and starting all over again.

I would like to know what your thoughts are on amending the accord, scrapping it and starting all over again, as some groups have suggested, a reference case. What is your bottom line, or are you telling us that, practically speaking, you do not think the accord can be amended so the next best step is to proceed with your three recommendations?

Dr. Greene: I think from a practical perspective there are not going to be many amendments to be in court, if any. Now perhaps some minor amendments could be proposed, for example, so that lawyers and judges from the Northwest Territories and the Yukon could become Supreme Court of Canada justices, and that sort of thing. Perhaps section 16 could be amended as some of the women's groups have recommended. Those are really fairly minor things and I doubt if there would be very many objections.

With regard to the inclusion of the native self-government clause in the Meech Lake accord, I do not think it is practical to amend the accord to include that particular section, but I think it is practical to start the process for another constitutional amendment. It would be appropriate for the Ontario Legislature to suggest another constitutional amendment which would give aboriginal Canadians the right to negotiate self-government agreements. That could go through the mill. Who knows? It may become a constitutional amendment before the Meech Lake accord does. I think that might be the most practical way of approaching that issue.

Mr. Eves: As a matter of fact, the Metis association appeared before us yesterday, I believe it was, and recommended a companion amendment, which you may or may not have read.

Dr. Greene: Yes. I read about that in the paper this morning and thought it was a very good idea.

Mr. Eves: I thought that was a pretty novel suggestion and a good idea. Thank you.

Mr. Chairman: Thank you. Mr. Elliot.

C-1440-1 follows



1440

~~Dr. Greene, I read over this to page 99~~

~~Mr. Dyer 99 was a very~~

~~Dr. Greene 99 very good idea~~

Mr. Elliot: I, too, would like to thank you very much for coming. For me, personally, this has been a very good day because, without exception, the presenters, like yourself, have made very good suggestions with respect to process and other matters that they are concerned about. All of my days have not been that good because a lot of the people who come before us are very pointed in their concerns about various aspects of the accord and I think this is very valuable input.

Do not read me incorrectly on it because I think by recognizing how deeply people feel about things that they feel are wrong about the accord, and only by overcoming that, will we make future endeavours better.

In particular, you specifically have made comments with respect to the three areas. I would really like to, with a little bit of background, talk a little bit more about, and get your ideas more about, the unanimity clause because it is not really that comprehensive the way it is in the accord. The way I read it, there are only about eight areas where that is required and there are still a lot of areas where the old amending formula is still in place. So it is not all-encompassing by any means.

The kind of flavour I would like to get is because of your particular background, coming from Alberta and actually admitting that you changed your mind on something. I know a lot of people from Alberta and I have not met too many who have changed their minds and see eye-to-eye with people from Ontario on a lot of things. The veto power that Quebec thought it had until the Supreme Court of Canada decision knocked it down I think really is the intent behind why the unanimity clause came into being and, instead of having one province with veto power, we now have all of them essentially with veto power if they want.

I think the positive flavour that you have given us here today, I would hope, the way I am interpreting, means that they could get together on major things like bringing one of the territories into Confederation when the territories actually in fact were ready for it. Could you amplify how you feel about the unanimity clause and then the eight areas where it does apply, how that might be restrictive and whether it can be overcome, the same way you have commented on the other three things?

Dr. Greene: The unanimity clause is a logical outcome to the demands presented by Quebec--specifically the demand for a veto--and the demands of the western premiers, which is, "We will not give anything to Québec that we also cannot have." Former Premier Lougheed spoke to one of my classes in September 1986, and in this class we took a look at the five demands from Quebec and asked him whether he thought there would be a solution to the

problem. He said, "No because Quebec wants a veto and we will not allow it that unless we get a veto too and it is probably not in the cards."

In my class, we took a look at the five demands of Quebec and the position of the western premiers and we came up with something that looked a lot like the Meech Lake accord. So I think it is a logical outcome of those demands. In terms of the sections that are covered by unanimity, I think it is logical that most of them should be covered by that procedure. I do not think it is going to hamstring us very much. The one thing that concerns me is the admission of new provinces into Confederation. I think it is appropriate to give Quebec a veto power over that issue. I do not think it is necessary for any other provinces to have a veto power. That is a constitutional change that could be considered in the future, and perhaps the western premiers would back down on that. I do not know.

Mr. Elliot: Could I ask a supplementary, please?

Dr. Greene: Yes.

Mr. Elliot: It is because of something you said part way through that with respect to your class sitting down and coming out essentially with the Meech Lake accord. For the record, I think one thing that has not been talked about enough is the fact that Meech Lake just did not happen and then three months later it was finalized, because the people I talk to on the street do not really understand the way something like Meech Lake--a conference like that--evolves.

In actual fact, they do not understand that there were groups of people in all the provinces and federally working for 18 months before that meeting and there were specific things on the table that were going to be discussed by negotiation. They were not acceptable to everybody so everybody went away for another three months and there was substantial change before the final document was signed on June 3.

I think that kind of thing is very important and if someone like a class like yours sat down and essentially came through the same kind of deliberations and came up with ~~these~~

C-1445 follows.

(Mr. Elliot)

~~I think that kind of thing is very important and if someone like you
like you're set down and essentially come through the same kind of
deliberations and come up with essentially the same kind of thing, maybe we
should be concluding that it really is not that bad.~~

Dr. Greene: That is my conclusion. The terms of the accord I think are not all that bad. I think at seven o'clock in the morning the day after the accord was announced I was phoned by a radio station. It wanted my reaction. Two minutes earlier I had read the three paragraphs in the newspaper about it. I said it looks like a good first draft to me. I think it could have been improved.

I think the major problem with the accord was the process. It is an exercise in elite accommodation. As you say, many people were involved in working out the terms of the accord and many constitutional experts across Canada were involved in that process. What it lacked was public participation and so the result has been a tremendous amount of bitterness among some groups.

Miss Roberts: I have just a very brief supplementary. To me it is amazing the change in the procedure, no longer the veto power and all the provinces are equal. That is a great concern because here we have the Meech Lake accord in which we have 11 premiers agreeing. How did that ever occur? What was there that made those 11 people come to that agreement? People fear the future, but I cannot understand how these 11 got together at this time. Again, I think that is something that we must consider as well. Do not fear the future as much as being thrown ?? ??

Dr. Greene: I agree with you. I think the constitutional change in Canada is not as difficult as some people would have us believe. We have regular first ministers conferences. These people get to know each other after a while.

Miss Roberts: If they stay around long enough.

Dr. Greene: If they stay around long enough, yes.

Mr. Breaugh: Do not rub it in.

Miss Roberts: I did not.

Mr. Keyes: We do our best to try ?? ??

Dr. Greene: We think of bargaining strategies. There are constant meetings of officials from across that country who work out compromises. It is the whole process of executive federalism that other people have discussed with you, and it works in many ways. We can get these agreements. The only thing lacking is public participation.

Mr. Chairman: I think that if there is one thing that has been very clear throughout all of our hearings it has been that the lack of public participation, whatever the other merits were of the process, has perhaps in some ways caused the greatest damage to the acceptability of the accord to the point that problem may still cause the accord not to be accepted. We only have

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to look at the events in Manitoba potentially to see what might happen. As Mr. Breaugh says, we are going to have to address that question very seriously in our report.

I want to thank you very much, on behalf of the committee, for coming this afternoon. We appreciate your presentation, the answers to our questions and also for the material from the Canadian Bar Association.

Dr. Greene: Thank you very much for having me.

Mr. Chairman: If I could now ask the representatives from the Women's Centre at the University of Toronto, Lisa Freeman and Valerie Heskins, to come forward. I want to thank you very much for joining us this afternoon. We all have a copy of your paper. If you want to make your presentation, we will have a period of questions afterwards.

WOMEN'S CENTRE, UNIVERSITY OF TORONTO

Ms. Heskins: The University of Toronto Women's Centre is a feminist collective dedicated to the improvement of the status and condition of women at the university. We appreciate the opportunity afforded to us by this committee to express our concerns on a matter fundamental to these aims: the constitutional amendment, hereinafter referred to as the Meech Lake accord.

Canada is a large heterogeneous country, fraught with regional and status group divisions. While the Meech Lake accord is an attempt to remedy the regional divisiveness of our country, it has further exacerbated the potential for status group inequalities. We at the Women's Centre at the University of Toronto are primarily concerned with the effect that this accord will have on the status of women in Canada. We are disturbed by the way the proposal was formulated and the resulting vague wording of the accord.

C-1450 follows.



(Ms. Heskins)

~~Women are primarily concerned with the effect that this accord will have on the process by which they are disturbed by the way the proposal was formulated and the resulting vague wording of the accord.~~ However, in the interest of brevity the University of Toronto Women's Centre will address itself to the following four issues: the process by which the accord was drafted, individual and equality rights, opting out and the north.

1450

Ms. Freeman: The process by which the Meech Lake accord was drafted blatantly defies the participatory nature of Canada's democracy. There has been a minimum of informed public debate around the accord. What is at stake, a fundamental alteration of the nature of our country, is either unknown or not fully realized by most Canadians. We strongly object to the stipulation that all 10 premiers and the Prime Minister must agree for an amendment to pass. This turns these hearings into a virtual farce. The fact that Prime Minister Mulroney could effect such a significant change without consulting the people of Canada is simply a travesty of the democratic process. Hence, we urge that this committee make recommendations based on these hearings to the Legislature before the accord is ratified.

Ms. Heskins: Individual and equality rights: Our principle concern as Canadian women is how the Meech Lake accord will affect the equality between the sexes. The accord also affects the rights of age, sexual orientation, religion and mental and physical disability. As women can be elderly, lesbian, any religion and mentally or physically disabled, all of the above rights are important to us. Furthermore, as feminists, we are liberationists and that is our concern about the rights of all.

Frequently, the vocalization of the concerns of women, to paraphrase journalist ??Louisanne Gagnon, is seen as a Trojan Horse constructed to attack the gains which Quebec has achieved in the Meech Lake accord. This is simply not the case. The "distinct society" clause is not in conflict with the call for any equal rights provision. Individual and equality rights in and of themselves should not be controversial. Equality, as one of the fundamental precepts of liberal democracy, should be enshrined in the Constitution as a matter of course. The Meech Lake accord must be renegotiated to include a provision ensuring that the Charter of Rights and Freedoms prevails in any contradictory wording.

The focus of the debate with regard to the individual and equality rights centres around the exclusion of native and multicultural rights from linguistic and distinct society provision set out in clauses 2a and 2b of the amendment proposal.

It is often argued by proponents of the accord that it is not the intention of the amendment to override the individual and equality rights and freedoms under sections 15 and 28 of the Charter of Rights. Unfortunately, one need not look very far back in Canadian case law history to discover that it is the letter of the law and not its spirit which prevails over time. Even with its explicit provision for equality to protect the disadvantaged, the charter has been used against those for whom it was intended to secure justice. Judges are defining the gender equality rights in section 15 of the charter very narrowly and with little regard to the provision of section 28, which emphasizes the fact that charter rights apply equally to male and female

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persons.

Yet, in a recent review in ??Broadside of how section 15 has been used it was found that 12 cases concerned men charged with sexual offences, six cases involved men seeking equal benefits from social assistance or family law, a scant 10 per cent of the cases promoted the equality of women. The outcomes of these cases show that men rather than women seem to have gained more from the laws that are instituted to protect their rights.

Clearly, Canadian women in particular and justice in general cannot be made to rely on the sensibility and adeptness of the accord in judging when and where the spirit of the law should prevail over the letter of the law. As it stand now, the Meech Lake accord, due to its imprecise wording, endangers the provisions for individual and equality rights by allowing the possibility of their overriding by the "distinct society" clause.

Constitutions are meant to protect the country's citizens from the worst governments. For the status of women, possible worst case scenarios made possible by the accord include, for example, a decision by a future Quebec government fearing the lowering population and hence decreased political power putting incentives in place for women to adopt traditional child-bearing roles or a rerun of the ??Lavall case of 1974 in which it was ruled the federal government had the constitutional right ...

C-1455-1 follows



~~putting incentives in place for women to adopt traditional child-bearing roles~~
~~as a result of the 22 Levee case of 1974 in which it was held that the federal~~
~~government had the constitutional right to ensure the interests of a group~~
over a woman's equality.

Clearly, the implication of the exclusion of rights other than aboriginal and multicultural rights are grave and it is tantamount to establishing a hierarchy of rights, a notion which is completely unacceptable.

The University of Toronto Women's Centre advocates the deletion of clause 16 and the provision that the Charter of Rights take precedence over the accord. We feel another alternative is to add women's equality right in the charter under sections 15 and 28 to clause 16 of the accord.

Ms. Freeman: The opting out clause: One of the pillars of our national identity is the communitarian orientation of our society. The most blatant manifestation of this is our array of social programs ranging from medicare to pension plans to partially subsidized day care. Prior to the Meech Lake accord the social programs were funded by both federal and provincial governments under a national cost-sharing scheme. Even then, the province had a great amount of leverage with the money, witness Bill Bennett's cutbacks of 1983 wherein he purloined \$16 million from the public school system and transferred it into the private schools.

However, prior to the Meech Lake accord a province was still bound to carry out certain social programs such as medicare and the Canada assistance plan. Post-Meech Lake, the provinces are now able to opt out of national shared-cost programs. The conditions, however, are very vague. The new provision states that the federal government "shall provide reasonable compensation to a province that chooses not to participate in a national shared-cost program in an area of exclusive provincial jurisdiction if the province carries on a program or initiative that is compatible with the national objectives."

As women, this concerns us greatly because all women need these services, particularly single mothers, battered wives, pregnant women and sex trade workers. As university students this concerns us because the universities are underfunded as it is. If the provincial governments opt out of national cost-shared funding, the first programs to be cut will be ones like the transitional year program at the University of Toronto and other part-time programs. As the majority of the users of these programs are women this greatly concerns us.

We are not proposing that the provincial governments will definitely be less prepared to fund social service programs. We simply object to leaving the possibility open. Premier Bill Vander Zalm's recent defiance of the Supreme Court decision on abortion is a good indication of the possibilities in store for women now that the provinces can opt out.

This provision, while it might placate individual provincial governments, contributes to already existing regional inequities. This is simply unjust. Canadians have the right to expect the same level of service as other Canadians regardless of their province of residence. Furthermore, nowhere is the term "national objectives" defined and there is an absence of standards indicated with which to meet these undefined national objectives.

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In light of this, we suggest two alternatives. The first is very simple; delete the provision from the accord. The second would take much more effort, would not likely get provincial agreement and may even be unconstitutional. However, it is only a suggestion. The opting out provision would be acceptable to us if the following amendment were to be added, that any provincial government which chooses to opt out of a national cost-shared program is required to set up a federally funded task force in its province, the focus of which will be the particular service out of which the government is opting. Furthermore, the provincial government should be bound to use the briefs submitted to the task force as a guideline for its actions.

Ms. Heskins: Another issue we would like to express our views on is the question of the impact of the accord on the north. One reason we feel the need to speak out on this topic is that aside from the recent Senate recommendations the issue has received little publicity in comparison with the gravity of the issue.

The affect of the Meech Lake accord on the north has accurately and eloquently be described as a constitutional Yalta which has the effects of preserving the political status quo and effectively freezing the territories out of the opportunity of attaining provincial status.

It has been proclaimed numerous times in the media that Canada is now a whole nation, but is it. The territories, making up one third of the Canadian land area, have been effectively excluded, perhaps forever, from belonging to Canada in the fullest sense. In a time of increased awareness regarding the Canadian sovereignty in the north, the exclusion of representatives from the territories from the meetings which led to the proposed amendment seem inappropriate at best.

No other region of Canada has to overcome the possibility of one province vetoing their opportunity to gain provincial status. Taking into account the large aboriginal population of the north this development is also effectively racist.

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(Ms. Freeman)

the opportunity to gain provincial status. Taking into account the large aboriginal population of the north, this development is also effectively racist. From the strictly numerical standpoint, this measure is by no means fair or democratic. The smallest province, Prince Edward Island alone, with its population of 100,000, could affect the future of the north and hence of Canada through its privilege of veto.

1500

In closing, we would like to reiterate our suggestions. First, we urge you to make amendments to the accord before it is ratified by the provinces, thereby rendering these hearings constructive rather than gratuitous. Second, we suggest that a provision be added to the accord which affirms the prevalence of sections 15 and 28 of the Charter of Rights and Freedoms over any potentially conflicting clause in the accord. Third, we feel that in light of the importance of our social service system, the opting out clause is unacceptable as it stands.

Finally, the under representation imposed on the northern territories is unjust and must be reversed by allocation of a vote in the amending process to each territory.

Mr. Chairman: Thank you very much for your presentation, which is very clear and specific in terms of the points that you raise and the recommendations. We turn now to questions. I have Mr. Keyes, Mr. Eves and Miss Roberts.

Mr. Keyes: Thank you very much, Mr. Chairman and I thank the ladies of the women's centre. I think it most appropriate that you gave us the other fill-in document because reading quickly through this one left us with a lot of gaps in understanding what you were getting at and perhaps even the committee would appreciate copies of what you have presented there, although we can get it from transcript later.

I wondered if you wanted to flush out a bit more and I may have in my pre-reading list just some of the ways you suggested in the process aspect of dealing with the amendments, because also within that other two areas, there is the process on how you feel it would have been more appropriate and what should we do in the future to make the process more meaningful. The second question then was when you talked about, you put it inside the area under individual and equality rights. I gather you were making a plea for a total change in the form of electing our government in Ottawa and you are making a case for proportional representation, somewhat similar to some other groups that have suggested adding additional seats or some method that would try to reflect in government the support that each party has across the country. Those are the two areas I want to address first.

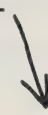
Ms. Heskins: I will address the first part first. In terms of the process, since the last four years of the Trudeau government, task forces have been in commission and I think they have been very effective. They have allowed groups such as ourselves, I mean this is something like a task force, to present their beliefs and their research to the government. That fits right in with the participatory nature of Canadian democracy which is getting less and less participatory, but task forces bring it back. I think for the Meech Lake accord a task force would have been a good method of involving Canadians in the process.

In terms of the second part of your questions, we did not say anything about electoral reform and I am not even sure that I would agree with it because there are problems with most systems, although people have, William Irvine, for instance and Ed Broadbent for that matter, have suggested various forms. There are other ways of making a national party integrative and regionally representative. One of them is something like the Ministry of State for Economic and Regional Development that Trudeau implemented in 1982 and then everything that went with that, the ??Fed, ??Andrei, etc. That to me was an excellent indication of the government at least attempting to involve regions in national economic policy. There are different ways of decentralizing power, that is one of them. The other is simply allocating part of the provinces. I do not see that as a good method.

Also, ??John C. Cortney has an article in the ??MacDonald report, where he comments on the amalga method and the size of the House. In terms of electoral reform, that is one method where the size of the House simply increases and the regional representation of each party increases in proportion to the size of the House.

Mr. Eves: I believe you may have already answered the question I was going to ask at the end of your presentation. I note the concerns that you have with respect to the accord. Assuming for the moment that this committee and other ??bodies across the country were able to address your concern about the process, especially in the future, and to make the--

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(Mr. Eves)

~~accounting for the moment that this committee and other officials from the country were able to address your concern about the process, especially in the future, and to make requisite amendments with respect to equality rights, section 16, the territories, native groups, your concern about the opting out clause seems to be a fairly fundamental concern of the accord to me. At one time there was a discussion I believe of using the wording, "national standards" as opposed to "national objectives" and that was subsequently changed at the insistence of one or more provinces. Would you be happy with such an amendment or do you think that your concern is so basic about the ability to opt out that even that would not satisfy you?~~

Ms. Heskins: I would depend on how these standards came about, how that was decided also. I mean I think that is something that would need a lot of study.

Ms. Freeman: If it were a matter of simply changing the word from objectives to standards, it would be a matter of semantics and therefore it would not appease our objection. No, I think the opting out clause either has to be deleted or as we suggested, that the provinces be bound to implement task forces which are federally funded and go by those suggestions.

In a province like Ontario right now, it is not very much of a problem. The government, they are Liberals, but they are fairly progressive, but when you get into a province like British Columbia, it is a problem.

Mr. Keyes: The Liberal Progressive Party.

Mr. Eves: This could be the forming of a new party here.

Miss Roberts: If I might just carry on from the comments with respect to the opting out. You seem to consider it an opting out provision. You realize when you read through that it deals with only programs that are exclusive jurisdiction of the province and that come into effect after this is passed. So, it is not going to deal with any programs that are in existence now, it is programs that might be concerned about in the future and it does not deal in areas where the area can be filled by both federal and provincial. It is only an exclusive jurisdiction. Those are things that you have to consider and realize that it is much narrower than you seem to feel that it is, although maybe in the future there may be other programs that come up that are exclusively provincial to concern yourself about. That is one thing I would like you to think about.

The other thing I would like you to address your minds to right now is section 2, the "distinct society" clause. You spoke of that in some ways. What is your concern about Quebec? Do you think we should just go back to the drawing table completely with respect to Meech Lake, or is there something in Meech Lake that addresses a problem that one particular province had?

Ms. Heskins: We do not really have any quarrel with the fact that Quebec is a distinct society. We also believe that the north and those aboriginal peoples and follow the senate's, some guidelines on that and they should also be made a distinct society. That should never overrun an individual's rights ever.

As we have said, we want to recommend that the Meech Lake accord, the distinct society, will not override the Charter of Rights and Freedoms.

Miss Roberts: You realize that section 1 of the Charter of Rights and Freedoms explains that the individual rights are already tampered down by what is in ??

Ms. Heskins: But with the fact they are saying, okay, especially not these rights can be overrun by this "distinct society" clause. That basically leaves the other ones more or less open to judicial interpretation.


Ms. Freeman: If I might add to what Val has said. There are problems with the "distinct society" clause. However, they do not concern us directly as women of the University of Toronto Womens' Centre.

Miss Roberts: So you have not addressed them.

Ms. Freeman: If I were to address them, it would be my personal beliefs, not the beliefs of the centre.

Mr. Allen: I think it is very important that organizations representing women in the province lay their views before us as frankly as they possibly can, because they are quite aware of the some recent gains that have been made, not all of them perfect by any means, last Legislature, pay equity legislation for example, gets us some way down the road, but not as far as we would like to get on---

C-1510-1 follows



(Mr. Allen)

~~Some recent gains have been made, not all of them perfect by any means. Last Legislature pay equity legislation, for example, got a summary vote, but not as far as we would like to go on part of that front. So, I think we have to listen with both ears when we hear you bringing questions about the Charter of Rights and Freedoms before us. For example, the way the courts have applied it.~~

1510

One of the questions I want to ask you in that regard is that I think pretty consistent position that has been laid before us by women's representatives has been that section 16 should be abolished and that the priority of the Charter should be affirmed before we proceed with Meech Lake. I was not quite sure whether you were giving us that message or not when you told us that in fact the court cases under the Charter, even under the equality section, were not resulting in fair judgments that promoted the equality of women. Does that tell me you have some reservations about the idea of the priority of the Charter because it was relatively ineffective because of the way it is applied in the courts? Am I misreading something or do you want to amplify that question of priority of the Charter?

Ms. Heskins: That was mainly to buttress the point that we think it should be said specifically that these rights should be enshrined because look what can happen and look what has happened with the Charter of Rights and Freedoms. That has been interpreted bearing out, and we just do not want to see that slide even further back. I mean, we are being realistic. Personally, our centre does not intend to try and go after the Charter of Rights and Freedoms. That would be very hard to change at this point.

Mr. Allen: But you are not all excited about it, apparently.

Ms. Heskins: And also, you cannot do much more than what is actually down there anyway.

Ms. Freeman: To add to that, when you say we are not all that excited about it, in a capitalist society, we need to enshrine the rights of the individual because the rights of the individual are constantly being endangered. However, ideally, the rugged individualism that comes from a negative ??definition of liberty, such as is entrenched in the Charter of Rights other than certain clauses like affirmative action, is not ideal, is not something that we advocate. However, given that we do live in a capitalist-liberal democracy, we need the Charter. We just have some ideological problems with the way the entire society is set up. That we cannot, you know, we could blow up Queen's Park or something but we cannot change it very quickly.

Mr. Allen: We appreciate you have not done it

Ms. Freeman: They did not check me when I came in here.

Mr. Allen: No, it is not an uncommon observation that in a society where there is some fundamental maldistribution of property, wealth and power, that when you set up a charter based on individual rights, the likelihood is that the courts, in fact, will end up being accessed more readily by those who

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have the power and the status and the wealth. And therefore, you do get perhaps consequences that were not intended ideally or even ideologically in the Charter itself or even perhaps by the court, by the justices, but that is the way it plays out. I understand what you are saying and I am very sympathetic with that but it would seem to me to modify this earlier position that we have been hearing, simply drag the Charter in there and said it takes priority, that whole problem would be solved. You are saying it is not simple, and I hear you, I think that is an important thing to have said.


Secondly, your whole presentation stresses the importance of process and democracy and participation. I like that. There was only one note that sort of confused me somewhat, and that was when in your brief--you did not amplify this in your statement--you noted that now you would have to lobby 11 governments instead of one.

It just struck me on the other hand, you were very favourably disposed to task forces. So, I have some two visions of the future: one where you might only have to go to one place to get your voice heard but on the other hand, a vision of the future where you would be going all over the place, not just to 11 but perhaps hundreds and hundreds of places to have to say what you wanted to say. I just wondered am I missing something or whether there is a contradiction there or what we have got.

Ms. Freeman: When I was addressing Minister Keye's question that I think that...

C-1515

follows



(Ms. Freeman)

When I was addressing Mr. Koyen's question, we backed him into it also, but yes. If the federal government merely allocates power to the provincial governments then we are in danger, because the provincial governments are not obliged to their constituents to have task forces and to continue on with the participatory tradition of Canada's democracy. They are only accountable to the electorate in terms of getting voted in again, and that is a problem in itself as democracy does not seem to be working so well these days.

However, it is important that the national government, I do not think, is capable of answering all the needs of all Canadians, because we live in such a large, heterogeneous country. Therefore, power must be decentralized. However, to decentralize it to the provincial governments and stop there is not enough. It has to be decentralized even further so that local community groups can get involved and a proliferation of worker-run businesses might occur. When that happens, task forces are very valuable.

As long as the provincial government is bound to certain rules of conduct, it is a very good forum for people to express their wishes about their own country.

Mr. Allen: Finally, do I gather that your final bottom line on the accord is that if it is not amended in certain directions which you have noted, we might as well simply abandon the whole process or start all over again and scrap the deal, or are you going that far? Are you saying: "These are things we ideally ought to do, but if we cannot get them now, we have to get them later. We could put up with the accord if that was the way it worked; later better than nothing"?

Ms. Freeman: I think if we do not get them now, our chances of getting them later are significantly reduced.

Mr. Chairman: I wonder if I could just ask you one question. One of the issues that comes up when we are looking at the question of individual rights--and I appreciate the points you have made about the importance of individual rights--is that another aspect of our country, particularly in the case of the French Canadians who are in their largest numbers in the province of Quebec forming a majority, for them there has to be some concept and understanding of a collective right, and that there may be a problem at times between what they might see as the necessity of collective rights versus individual rights.

We have been grappling with why did section 16 simply not say that the charter should have priority; not necessarily section 16, but some other statement in the accord that just underlined that. One of the possible reasons that did not happen was a concern that Quebec might have in terms of how that might affect what in their judgement were perfectly legitimate collective rights.

I do not have an answer to that and I do not even know if that is a valid reason why section 16 is framed the way it is. I am just wondering, do you see a place in our country where we have the two official languages where there is a place for protection of collective rights in some respects? Is that a valid notion in your understanding of individual rights and collective rights?

Ms. Freeman: It is a very valid notion. If we thought that it was not a valid notion, then we would not advocate affirmative action for women, for instance. Of course it is essential.

I agree with you, it is a problem, one that I have problems resolving too, because on the one hand there is a culture and on the other hand there is a certain standard of liberty that we have become accustomed to and expect, and when they clash it is very difficult. You end up being very ??anglocentric, to say, "This is right and this is the way it should be." So it is a problem I have and it is a difficult one to resolve, but I do see a need for collective rights.

Mr. Chairman: I empathize with the way you worked your way through that as well. I think it is a problem that we all have in that sense of wanting to have certain clear, distinct rights as individuals, yet in a country such as ours, recognizing the need as well in different areas of collective rights.

~~I want to thank you very much for your presentation and for the questions that you asked this afternoon. for making your presentation and for the questions that you asked this afternoon. for making your presentation and for the questions that you asked this afternoon.~~

C-1520 follows.

Mr.
(Mr. Chairman)

1520

I want to thank you very much on behalf of the committee for coming this afternoon, for making your presentation and for answering our questions in a very frank and full way. We very much appreciate the time you took in preparing the presentation and coming and joining us this afternoon.

If I could now call upon Roberta Need, Martin Shulman and David Sloly? If they would please come forward and make their submissions? We have received a copy of your submission and I think that has been circulated to everyone.

Just for purposes of Hansard, so they will know who is speaking, Mr. Shulman is--

Mr. Shulman: I am Mr. Shulman or my father is Mr. Shulman.

Mr. Chairman: I will just note for the record that you have given me a copy of Eugene Forsey's analysis of the report of the joint committee and thank you for that.

I would like to welcome the three of you to our meeting this afternoon. As you are undoubtedly aware, we provide you now with an opportunity to make your presentation and we will then follow it up with questions. So please proceed however you have decided among yourselves.

ROBERTA NEED, MARTIN SHULMAN, DAVID SLOLY

Ms. Need: We have passed out a document and we feel, because of the nature of our argument, it would be best if we stayed with the presentation.

Mr. Shulman: Just prior to starting that, I think there is one thing I would like to say, because we are here as individuals. We take this thing very seriously and there are a few things I would like to comment on.

First, we do appreciate the fact that the members are here, that the committee has been set up and that we know everybody here takes their task very seriously. However, one thing I would like to comment on is that this set of hearings is in essence very much a farce, like the federal hearings, because the Premier has already stated that he will not accept amendments. We are not happy with that. This has no reflection on the members here or on the work of the committee, however, we are upset that this position has been taken prior to the committee hearing presentations and making its final recommendations.

Although this may be a bit of a futile process, we believe that just maybe something can come out of it. If nothing else, we would at least like to get into the record some historical "I told you so" for down the line.

Ms. Need: The people of Canada versus the governments of the provinces. It is the intention of the authors of this paper to concentrate on the effects of the 1987 constitutional amendment on the individual citizen of Canada.

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We are the first to agree that the amendment has a negative impact on the rights of Canada's original inhabitants, minority groups, women and the two territories with their aspirations for provincial status.

It is also recognized that the transfer of powers from the federal to the provincial level weakens the ability of Canada to act in a cohesive and consistent manner.

The absurdity of the piecemeal approach to Senate reform, which in this case merely transfers the right to make patronage appointments from the federal to the provincial level, is also recognized as inadequate.

We are also concerned with the unanimity principles surrounding future constitutional amendments in specific areas. It is our contention that this merely prohibits future amendments from being made.

However, what concerns us the most is what few people have spoken out on the impact of this amendment on the individual citizen in Canada. For this reason, we wish to address ourselves to the "distinct society" clause of this amendment and its impact on the individual citizen.

We are individuals. It is true that we can identify ourselves as part of a minority or a majority group. It must still be recognized that by and large we live and act out our lives as individuals. When we have concerns about the impact of government policies and actions, it is based on their impact on us as individuals. This is true for Canadians in Newfoundland, Quebec, Ontario, Saskatchewan or the Yukon.

Now let us turn to the issue at hand.

~~During the 1980s, a royal commission released a report that stated that most of us have come to accept as the two most distinct characteristics of Canada. First is that Canada is a multicultural.~~

C-1525 follows

During the 1960s, a royal commission released a report that defined what most of us have come to accept as the two most distinct characteristics of Canada. The first is that Canada is a multicultural society and the second is that we are a bilingual society. Most Canadians accept this reality, although a few still persist with their belief that we should be a unilingual, unicultural country. This view is outdated and backward looking. We choose to look forward with the recognition of our bilingual, multicultural reality.

The adoption of official bilingualism came too late to stem a rising tide of separatism among Quebec's French Canadian population. After all, bilingualism merely provided equal access to the services provided by the government of Canada, as well as providing equal access to participation as employees within the federal civil service. French Canadians were protesting against their unequal treatment within the work world within the one province where they were and are the majority population.

To set matters right, successive governments in Quebec threw off the economic and education policy blinders that were the norm during the Duplessis era. Technical and business education took their rightful place in the education systems of Quebec. Linguistic and cultural laws were passed that reversed the old system whereby French-speaking Canadians not only left their families at home when they went to work, but also their language and their culture. In modern Quebec, French is the language of work, play and government.

Separatism still continued to rise in Quebec and reached its peak in 1980 when 40 per cent of the population of Quebec supported the referendum calling on the government of Quebec to begin to negotiate sovereignty association with the rest of Canada. We all know that 60 per cent of Quebec rejected this view and unequivocally opted to remain within Canada as equal participants in Confederation. When the results of this referendum were announced, then Prime Minister, Pierre Elliott Trudeau, started to devise plans to renew our Confederation by striking a new deal for all Canadians.

To provide the kind of protection and power required to make Canada bilingual and to promote the new reality of multiculturalism, the Liberal government turned to the Constitution and the old Canadian dream of patriation. For over 50 years, successive Canadian governments had made the effort to put control over our Constitution into Canadian hands. For over 50 years federal governments were stymied by demands from the provinces over the amending formula for a patriated constitution. Quebec governments feared that Canadian control over the Constitution would result in a constitutional amendment eliminating or reducing the status of French guaranteed by the British North America Act. This would constitutionally achieve what was already happening in every day life for French Canadians.

The problem was that French was not used in the workplace in Quebec because employers, the majority of whom were English speaking, would not allow French to be the language of work. French governments felt helpless in the face of this decline in the status of French in Quebec and in the nation as a whole. For years they ignored this growing problem and relied on the constitutional guarantees to protect the French language. This was an inadequate approach and eventually the whole problem of French language use had to be addressed through looking at practical means of achieving what the Constitution guaranteed.

Ms. Need

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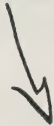
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The solution to this French language status problem proved to be simple. The question facing the Quebec government was did they have the power to protect the cultural and linguistic rights of their French-speaking populace. Little did Quebec governments realize that they had always possessed, through the legislative process, the power to increase the stature of French in the province. For those that doubt this reality, one merely has to turn to the language laws introduced by Premiers Bourassa and Lévesque. They did not require new constitutional powers to achieve a rebirth for French in the province's workplace. Legislation and the will to make it work have resulted in the current status of French in Quebec.

The implementation of bilingualism on a national scale has resulted in changes in the entire nation. The advent of French in the nation as a whole rivals the new stature of French in the province of Quebec. This is more clearly demonstrated by the continually rising enrolment of students in French immersion programs. Canadian parents have turned to French immersion as the obvious answer to their concerns that their children must be able to live and operate in both official languages in Canada. The demand for French immersion is so great that school boards are unable to meet the growing demands of the students they serve.

C-1530 follows



~~concerns that their children must be able to live and operate in both official languages in Canada. The demand for French immersion is so great that school boards are unable to meet the growing demands of the students they serve. This~~
not only reflects the growing use of French in Canada as a whole, but it also reflects the growing acceptance and support for official bilingualism and increased French language usage in Canada.

1530

This growth in the stature of French in Canada did not eliminate the need to protect French within the Constitution, but it shifted the focus dramatically. By utilizing existing legislative powers, the provinces have the means to address linguistic and cultural concerns in a forceful and effective manner. In fact, the issue that emerged was how do the people of Canada, as individuals, protect themselves from the powers of the governments and institutions created through the Constitution. It must be remembered that governments are the creations of constitutions and constitutions are created by the people of a nation. When turning power over to governments and institutions, the people must have a means of defending themselves from abuses of this power. Power is only granted to a degree. The individual retains for himself or herself certain rights and powers that do not have to be given to governments.

To protect one's self from these problems of overstepping the bounds of legally constituted power, individuals must be able to challenge their collective creations and have these challenges addressed seriously and meaningfully. Prime Minister Trudeau saw in this checks and balances system the perfect means to address the whole issue of protecting French language rights. The Charter of Rights and Freedoms provides each person in Canada with the means to protect himself from infringements on his rights and freedoms by the governments of this land. This same document also gives each person, whether he is French or English speaking, the power to protect his linguistic and cultural rights through court challenges to the actions of governments, employers or other individuals. In short, French language rights are protected in our Constitution. The real problem is that we have approached Constitution building backwards.

In an ideal situation, the powers of the individual would be protected prior to the creation of the institutions empowered to wield the collective rights of society. In Canada, these institutions were in place prior to concerns over the rights of the individual being expressed. When Prime Minister Trudeau chose to grant back to the individual the powers that should rightfully have been ours, he was met with stiff opposition from the provinces. They felt that they were the natural body to entrust with the means to balance the powers of the federal government. Instead, they found themselves lumped in with the federal government as an institution the must be scrutinized in relation to the rights of the individual. Individuals were given the means to check the collective powers of all governments in this nation. This is a situation that provincial governments did not and still do not like.

The proposed 1987 constitutional amendment forces upon us a backward-looking vision of Canada. Behind the guise of bringing Quebec into the Constitution, the amendment undermines the gains made through the adoption of the Charter of Rights and the implementation of bilingualism. It

~~Ms. Deed~~

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is incorrect to state that Quebec is or was not a part of the Constitution. When the Constitution was patriated, Quebec was not exempted from its provisions because it did not agree. A separatist Quebec government came to the constitution talks determined to oppose any deal. There should be no surprise that they ended up opposed to the patriation of the Constitution in 1982.

What is surprising is that within four years of achieving the elusive dream of patriating the Constitution and completing the process of achieving independence, Canadians find their Prime Minister and the 10 premiers trying to amend a system that has not been given a chance to work. While the courts are busy trying to bring into line the laws of the land that violate our individual rights, our so-called leaders are trying to steal these rights back from us. In a blatant grab for power, the Prime Minister--

C-1535 follows



~~being into line the laws of the land that violate our individual rights. Our~~
~~so-called leaders are taking away these rights back from us. In a blatant~~
~~grab for power the Prime Minister and the provincial leaders have agreed to~~
grant unto the legislatures of this land the right to define and inhibit the
natural growth and evolution of culture. While they chose to call this an
accord, we recognize it for what it is, a lust for power and the theft of our
rights as individuals.

Provinces are now constitutionally granted powers to preserve the
existing linguistic demography of our nation. Little thought has been given to
the fact that bilingualism, immigration, economic growth and individual choice
might lead to a natural change in our status quo. With this amendment, natural
change will be prohibited. What is labelled as a fundamental characteristic of
Canada is, in reality, a snapshot of this particular moment in time.

Any student of Canadian and world history knows that linguistic
demography can and does change with time. It can be logically argued that
provincial governments will now have the power to prohibit the growth of
bilingualism and French-immersion education to preserve the fundamental
characteristics of Canada. Individuals will find themselves powerless to make
decisions that should be, and currently are, their right to make.

As if this preservation of linguistic demographic status quo were not
bad enough, we are also confronted with a second and more dangerous assault on
our rights and freedoms as individuals. Within this amendment, we are told
that Quebec constitutes within Canada a distinct society. We are not prepared
to argue with this point. It is true. It is also true that Ontario constitutes
a distinct society. Saskatchewan constitutes a distinct society. Prince Edward
Island constitutes a distinct society. Toronto constitutes a distinct society
and so on and so on.

What is repugnant about this constitutional amendment is the inclusion
of subsection 2(3). This section states that, "The role of the Legislature and
the government of Quebec to preserve and promote the distinct identity of
Quebec referred to in ??clause 1(b) is affirmed."

This not only creates inequality and accepts the ridiculous notion of
two Canadas, it also grants to the government of Quebec the power to define
and shape their version of Quebec culture. It grants a power that no other
province has and will create second-class citizens in Quebec. This "distinct
society" clause means that the Legislature of Quebec will not only have the
power to pass legislation designed to preserve the status quo, but they will
also have the power to force their version of Quebec culture upon a
defenceless populace. A once living and evolving dynamic will be subjected to
the stultifying process of being interpreted, frozen and forced on the people
by legislators. The excesses that will inevitably follow from this power will
be unchecked because the Charter of Rights is superseded by this amendment.
Quebec's government will have the power to define what is or is not a
desirable component of culture. The individual will find himself or herself an
unwitting pawn in the game of cultural interpretation.

What is most vulgar about this whole exercise is that it insults the
people of Quebec. All Canadians are being told that the individual in Quebec
is incapable of shaping and creating their own culture. They are being told
that instead of having a Charter of Rights in place to check the unwarranted

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excesses of the federal and Quebec governments, they will be protected by granting unto their provincial Legislature new powers that are unchecked in any way. Individualism will be replaced by condescending provincial cultural interpretation. An insult, such as this, cannot be unchallenged. Inequality, such as this, cannot go unchallenged. Not only are the people of Quebec, as individuals, subjected to the same preservation excesses as the rest of us, they are also subjected to new provincial powers that leave them more vulnerable and unprotected. The negation of the Charter of Rights and Freedoms will thus be more strongly felt--

C-1540 follows



(Ms. Need)

~~The negation of the Charter of Rights and Freedoms will thus be more strongly felt in Quebec than in the rest of Canada.~~

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To state that opposition to the 1987 constitutional amendment is anti-Quebec is absurd. Quite to the contrary, support for this amendment is anti-Quebec. Specifically, it negates the rights of the citizens of Quebec. It is true that opposing this amendment runs contrary to the designs of the government of Quebec. However, when a government intends to deprive its people of their natural rights, it is the obligation of the individual to oppose these actions. That is what has prompted us to prepare this defence of the rights of the individual Canadian.

We have shown who the losers in this constitutional game are. Who are the winners? The 10 Premiers have won. Their insatiable lust for increasing their power has been gratified temporarily. In the future, other separatist Premiers, such as Jacques Parizeau, will have the power to enact separatist legislation against the wishes of the people of Quebec. The 1987 constitutional amendment is sovereignty association. It has turned every Premier of Canada into a closet separatist. To support this amendment is tantamount to supporting the break-up of Canada.

We can only end this dissertation by asking, what would possess you to support this egregiously flawed document?

Mr. Chairman: Thank you very much for your presentation and for picking up, I think, on a couple of points that perhaps have been touched upon, but have not been discussed in quite the detail that you have here in terms of the growth of bilingualism and some of your comments on various demographic shifts and changes, French-immersion programs and so on.

Let me begin perhaps with a question because it flows from the group that was here before and I think you are speaking to this issue as well. I am not sure if there are not some contradictions. I do not mean in what you said, but as sort of part of Canadian society I suppose, and that is a desire that we all have, which I think has been further underlined since 1982 with the charter, in our sense of how important it is as individuals that we have rights. Those are critical because we do not know from one decade to another what kind of government we are going to have. That affords, if not ultimate protection, at least some protection.

By the same token, the concern that has been expressed historically from Quebec about the need for some ability in that province for the government, which is the only one that represents a French-speaking majority, to have some tools that it feels can protect itself. I guess those often get defined then as collective tools. Clearly, there is always going to be a tension between the desire to protect the collectivity and to support and protect the individual's rights.

Mr. Allen has referred at different times in some of our discussions to the Quebec human rights statute, which probably goes farther than any other province, I think, and even the charter in many of its protections. While perhaps historically at times one has thought that the Quebec government has been less careful of protecting human rights at least in the more recent past,

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that has not been so.

I am just wondering, in dealing with this concept of the distinct society, whether that concept, which Quebec had put forward from the 1970s as a need for protection, is it your feeling that you cannot have in the Constitution some such designation or is it the way that it has been done? Is there some way of providing to Quebecers some statement that indicates an understanding of perhaps a different kind of collective problem that--

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~~Is there some way of providing to Quebecers some statement that indicates an understanding of perhaps a different kind of collective protection that they may have than we do? How do we find that sort of balance between what I would think is a legitimate need on their part to protect the collectivity while, at the same time, protecting individual rights. I would just be interested in your reflections on that.~~

Ms. Need: OK. I will go first and then I think everyone may want to comment on this.

Mr. Chairman: Fine.

Ms. Need: First of all, I think we stated in our paper that we feel that the province of Quebec and its government already have sufficient powers to protect the French language in that province. They have attempted to utilize them and they have been successful for the most part. The Supreme Court has not agreed with every provision. However, I think overall Bill 101 has certainly been accepted.

Second, I do not think that the particular "distinct society" clause belongs in the Constitution because, as we stated, it is only a snapshot in time. That may be the reality in 1987, but to suggest that we will force that, carve in stone and capture the wind and say that, "This is the way it must always be," is ridiculous because what happens is that we know that with the declining birth rate in Quebec, the predictions are in 100 years that the people of French origin may not be the majority any longer in the province. That is not to say that the government cannot promote the language itself, but I do not think you can force a particular culture on infinity because it happens to be a reality today.

In Ontario, and I know that anyone who has been here for more than seven or 10 years can walk down University Avenue and be fair skinned and be startled to see that you are increasingly in the minority. I think if Quebec says, "We must protect this snapshot in time," what prevents Ontario from saying, "Look. We were once the majority in this province. We have rights. English should be the language. Why can Ontario not make itself a predominantly Anglosaxon province to protect its culture?"

Mr. Chairman: Can we just let them just finish the answer and then we will--

Ms. Need: I know it is a free-for-all. Go ahead. I just do not think it has any business being in the Constitution because it is an evolving thing, culture and it cannot be imposed upon people.

Mr. Chairman: Just before a supplementary, I think the gentleman wished to comment.

Mr. Shulman: Generally, I agree with Roberta. No, there is no need for it in the Constitution. It is almost stating an obvious point, but it undermines the very principle. The Ukrainian community in Saskatchewan is a distinct society. We go across the country and we keep coming up with distinct society after distinct society. What makes this one distinct society different? Canada is a distinct society. I mean the whole tradition of Canada is that we are the mosaic. Everywhere in Canada there are distinct societies.

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Why place that in the Constitution? That is a fact of Canada. Multiculturalism protects that distinctness and it protects every group.

In terms of the whole collectivity question, my God, that is what governments are all about. They do protect the collectivity. That is what they exist for. The one thing that individual rights are all about is to protect people from excesses of that collectivity from a form of dictatorship of the majority. It is to make sure that the minority has a means to fall back on that they can go into the courts and say, "Look. Government has gone too far this time." In the courts, they can say, "You know something, you are right. Government has gone too far this time. This law or this section of this law has overstepped the boundaries that are provided for within that Charter of Rights."

Therefore, I think the government of Quebec has proven that it is able to protect the collectivity within that province. The language laws, all of the legislation that has been passed since the beginning of the quiet revolution demonstrates how Quebec's governments have been able to respond collectively or to that collectivity. I do not think there is a need in the Constitution for anything--

C-1550 follows



(Mr. Shulman)

~~All of the legislation that has been passed since the beginning of the~~
~~quiet revolution demonstrates how Quebec's governments have been able to~~
~~respond collectively, or to that collectivity. I do not think that there is a~~
~~need in the Constitution for anything other than the fact that governments are~~
going to exist and they have these powers. That answers the whole problem, as
far as I am concerned.

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Mr. Chairman: Mr. Offer had a supplementary question.

Mr. Offer: Thank you, Mr. Chairman. With respect to your response on the whole question of a distinct society, you were limiting your question to language solely. Surely, I take it as a given that there is much more to a distinct society than the particular language. I am wondering if that is just for me to imply in your response, or does distinct society, for yourself and for your position, merely centre on the particular language primarily in Quebec?

Ms. Need: I just have my notes. I gave Mr. Beer a copy of Eugene Forsey's analysis of the report of the joint committee of the Constitution, which is basically your federal counterpart. He quotes Mr. Bourassa, which was a quote by Mrs. Finestone, who is one of the MPPs from Quebec.

Mr. Chairman: Have you a page reference for that?

Ms. Need: I am sorry. It is page 11.

Mr. Chairman: Thank you.

Ms. Need: It is the third or fourth paragraph. It starts "Above all..."

Mr. Chairman: Thank you.

Ms. Need: This is quoting Mr. Bourassa himself. ?? "The French language constitutes one fundamental characteristic of our uniqueness, but it has other aspects, such as our cultural, our political, economic and legal institutions. As we have so often said, we did not want to define all these aspects, because we wanted to avoid reducing the National Assembly's role in promoting Quebec's uniqueness."

?? "There is not so much as a hint here of bilingualism, biculturalism, multiculturalism, the aboriginals, but more than a hint that the phrase 'distinct society' was intended to cover a very wide field." That is Mr. Forsey's interpretation and I think everyone is very well aware of the great esteem with which Mr. Forsey is held when it comes to constitutional matters.

?? "All attempts to show that the 'distinct society' means very little ring hollow upon examination. If it really means so little, what is it doing there at all?"

Mr. Shulman: If I can respond to that as well, yes, "distinct

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society" is a lot more than just language, but what makes any society function is not so much what the government puts in place, as what the people do.

That is fine. The people out there create what is distinct about their society. They create their own institutions. They create the clubs, the organizations, the events that are going to be held that make them very distinct. In a sense, they also create the process by which the people within that community interrelate with each other.

That is fine. That is great. What I object to is the idea of a government getting involved in creating those institution, creating the forms of interrelationship, creating the events and dictating what those are going to be. Leave it up to the people. It is done in a rather informal and very effective manner right now. There is no need to change it.

That is what the "distinct society" clause does. It lets the government start to dictate what those things are going to be and there is no need for the government to do that. The people do that rather well.

Mr. Chairman: Mr. Allen.

Mr. Allen: Mr. Chairman, I would like to take off from that point, but I would like to say I appreciate the brief very much because it adopts a singular principle, namely that individuals are never obliged to give up everything to their governments. Whatever the social contact is, they always hold in reserve themselves, their essences as individuals and therefore, they have inherent rights that always can be counterpoised and they must have the institutions to express those rights over and against the power of government.

But, if I might, I would submit that your paper, in effect, rides that proposition, perhaps from my point of view, too far. I wonder if you are not caught on the horns of your own definition, if I can put it that way.

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(Mr. Allen)

~~...that your paper is affected by that proposition, perhaps from my point of view, too far. I wonder if you are not caught on the horns of your own definition, if I am not at that way.~~

You just said that the people create their own institutions, and so on. I agree. That is the healthy base of culture and that is the way it happens. No government should be given the power simply and purely to meddle and distort and force those structures. At the same time, is it not true that those same people create, as you said, institutions? Among those institutions are their governments and their political parties. Is it not true that the terms that we have been given by the people of Quebec in recent years have been essentially one of two terms?

One is that the Canadian federation somehow accommodates itself to the concept that Quebec especially does stand for something that is a bit different in Canada, has done historically and continues to; that the trend of the use of French in the French population in Quebec has been up and not down, in terms of proportion over the long haul, and that they want us to recognize something special there that is sometimes called "special status."

But the other option is something much more extreme, namely a rather significant separation of that entity constitutionally from the body politic of Canada. That is what those people have been saying through their politics. If they have been saying that to us through their politics, how can we then, in a paternalistic way, if you like, turn around and say to them: "Sorry it doesn't mean anything. Your government doesn't mean anything. It is something different from all those other institutions that you have created, which you guys ought to keep as free and free-flowing" and all the rest of it?

Is there not a fundamental contradiction in what you are saying and are we not getting ourselves into a major problem when we put ourselves over and against the people of Quebec when they try to express themselves through their parties and through their governments in those ways?

Ms. Need: First of all-oh, I am sorry.

Mr. Shulman: I think the problem--there is definitely a case, when you speak to people in Quebec, of speaking out in favour of a particular vision or protection of their culture and language. The problem is not that there is a need to enhance the power of the government of Quebec. The problem is that French Canadians, as a group, only felt secure inside the province of Quebec.

The real problem is not whether to increase or decrease the powers of the government of Quebec. The problem is, how do we protect the French culture in Canada? This accord does not, to me, protect the French culture in Canada. Looking into the future, if anything, it threatens the French culture in Canada. It threatens French culture in North America because it ghettoizes French Canadians, or it tends to increase the tendency to ghettoize French Canadians in the province of Quebec.

If the constitutional accord were intended to protect the French culture in Canada and in North America it should have encouraged the use of French and the French culture outside of Quebec. This accord creates the idea that Quebec

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is a distinct society, and also implicit in that, is that the rest of Canada is a distinct society in a manner that is opposite or certainly contrary to that in Quebec.

To me, it does not encourage and certainly gives excuse or motivation to narrow minded people in provinces that have a very small French population to say: "Well, OK. They've got their agreement." In effect, it entrenches the idea that there are two Canadas and that they are geographically defined. To me, it does not encourage, it only discourages open-mindedness on the part of Canadians outside of Quebec.

If French culture in this country is to survive it has to go beyond the borders. It has to be enhanced beyond the borders of Quebec. Quebec can survive for the time being, but with the increasing amount of American media, which is largely anglophone--exclusively anglophone--I do not see that a small French population base in Quebec can survive indefinitely.

The only way for a culture to survive is for it to expand. This constitutional agreement only encourages ?? It discourages expansion of the culture.

Mr. Allen: Then what you are saying essentially is that those people in Quebec who are concerned about their survival as a culture and their language should accept the inevitable, that in North America the majority is going to win. That is one message you are giving me and the last thing you have been saying--

~~Mr. Shulman: That is not the message.~~

~~Mr. Allen: We have heard that before. The other side of it is~~

~~essentially~~

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~~...I am not going to accept the inevitable that in North America the majority is going to win. That is the message you are giving me in the last things you have said.~~

1600

Mr. Shulman: That is not what the message inferred.

Mr. Allen: We have heard that before. The other side of it is essentially the argument that because you provide services across the country for French-Canadians to feel at home across the country on the Trudeau bilingual model, that somehow you satisfied all the essential needs of the people of Quebec, as they have been expressing it to them.

I submit to you that we have only met some of the needs that the remains of culture and the community that exists of the grass roots has been telling us certain things. The minimal terms that they have told them to us have been this concept of distinct society, even as explicit as special status was, in terms of powers sought and demanded as distinct from what was to be accorded to other provinces across the country.

If I am to respect the people you say I should be respecting, namely the people on the ground in Quebec I hear, through distinct society, the smaller part of their concern about their collectivity. I surely feel obligated to respect that. If I do not, I am also faced with the political reality that there is a rather larger agenda that could be flowing in Quebec, and without getting into what the prospects of that are in detail, certainly it moves even further in the direction that you do not want to go than what we are faced with right now.

Mr. Shulman: If we turn back to 1980 for a second, when there was a government in Quebec which obviously, if we took it on face value, expressed a very clear vision that Quebec should not be a part of Canada, that sovereignty association, however they may have defined it, should be the reality because they were elected, then we would have to accept that was a reality, that is what the people of Quebec wanted.

However, when the people of Quebec were actually asked whether they supported what their government stood for they discovered that, no, they did not. They wanted to be a part of Canada. They voted in that referendum in 1980. They did not ask for any special powers. They were simply asked whether the government should start to negotiate sovereignty associations and they said, no. They were promised nothing else. Nobody said, "We will have a whole new Canada if you say no." They were promised nothing. It was, you have been in Canada this long so why would you want to leave Canada? What would you get out of sovereignty association out of leaving the Confederation? They said, "You are right, we get nothing."

After they said no, the Prime Minister stood up and said: "We are going to try and create something new. Because you have chosen to stay in Canada, we are going to create something that is equal for all people." That is when the Charter of Rights and Freedoms came into place. That, to me, is what protects the society, that so-called distinct society, or the French-Canadian society in Quebec. They have the charter to fall back on. They can defend themselves

Mr. Shulman

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through the charter, and through the other guarantees in the Constitution.

Ms. Need: First of all, in your original statement you again slipped into the equation that I understand, because you are a member of the government, that government equal the people.

Mr. Allen: The opposition, thank you very much.

Ms. Need: I am sorry. I am thinking as the government of Ontario. You are a part of the process. You are an elected member. That is government whether you officially rule or not, in our eyes.

Mr. Allen: It is news to me.

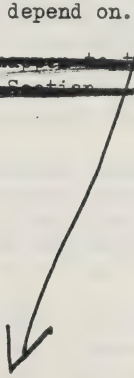
Ms. Need: You are equating you as a representative and Queen's Park as a whole with all of its tentacles, departments, etc. You are the people. What do you think equals what the people think?

In 1980, as Martin has said, it was shown that what the government may think is quite legitimate, but the people may not. I understand, with having been elected, that you would feel that as a representative of the people my opinions are their opinions. I do not think that can be said of any government at any time.

You seem to focus in, because I understand Quebec is the largest province extremely politically valuable in terms for any federal government to rule, to remain in power. It has the numbers. It feels it is distinct because of its language, its culture, or whatever they want to depend on.

~~I am from Cape Breton. I am from Nova Scotia. I happen to think, as a Cape Bretoner, that I am different from the people of Nova Scotia.~~

(Tape C-1605 follows)



(Ms. Need)

I am from Cape Breton. I am from Nova Scotia. I happen to think as a Cape Bretoner that I am different from an inland Nova Scotian, and that I come from a distinct society where not only do we speak English and French, but there is also a great deal of Gaelic that has been sitting in their pockets for 200 years. They are not losing their language.

When people ask me, I think of myself as a Cape Bretoner first. But that does not mean that I take it to the extent that I am no longer a Canadian, or even that the government of Nova Scotia represents me and my opinions. I think that the government of Quebec naturally has a desire of governments to increase its prestige, power and influence. It is only natural. This is what being government is all about. I am saying that it does not necessarily represent, in passage shown, for instance, the individuals people of Quebec.

Mr. Shulman: I have one little thing. In looking at the whole principle of government, when we have an election in Canada we elect a government. That government has not been elected to do A, B, C, D, E. F. G. for the term of its life. We have put our trust in that government. At the end of the members' term in office they will come back to us and ask us again, "Are you prepared to give us that same mandate to represent you?" We can then answer, yes or no to that government. Whatever legislation they pass, if they pass something that the people do not approve of, and four years later the government is defeated, so be it, that legislation could probably be overturned.

However, the case here is this is a Constitution. Two years or four years from now, if the government of Quebec is defeated, or other governments of the provinces are defeated because the people do not want this constitutional amendment, nobody is going to be able to say: "Let us overturn this amendment. We put in a new government, we can undo this because it did not really reflect what the people wanted."

This is something permanent. Changing this Constitution is going to be impossible in the future because it is going to require unanimity in certain key areas. I do not see unanimity coming when provinces, when premiers are asked, "Are you prepared now to relinquish powers that you have been granted as a result of these amendments?"

I heard an earlier presentation. The reason the 10 premiers were able to come to unanimous consent this time around was because they all got new powers. It was not because that for some reason there was a spirit of co-operation. They got powers. That was something they wanted, and that is something they got. You are not going to get unanimity if they are not going to be given more power. They are going to agree to give up what they have, they want more. The history of this country is that the provinces, the premiers want more power.

One commentator put it very well, that if Sir John A. Macdonald had offered this agreement in 1867 every province would have been happy to sign it then, including Quebec.

This is something that Canadian governments have fought against for over 100 years now. This is the first time that a Prime Minister has turned around and said: "Sure, let us give more power to the provinces. Let us do this


distinct society thing, and give power that goes with this distinct society." I would also argue that this distinct society clause gives more power than the special status that was argued for before.

This we gave to the Charter of Rights and Freedoms. They have been given the power in terms of preserving and promoting their distinct society to do whatever they see fit, regardless of what it states in the charter. They clearly stated here that the charter comes in second compared to this clause, with the exception of multicultural and native rights which, of course, are not really defined.

I do not see how we can turn around and support the government of Quebec stating that this is what it wants, this is what the people of Quebec wants. I am not sure that this is what the people of Quebec want. But I will tell you something else, I will bet that this is something that another distinct society in Canada might want. I will bet this is something that aboriginal peoples would like. I will bet that this is something that the Ukrainian population might want. This is something that the Jewish community might want. This is something that the Jamaican community might want.

If you can find them a province where they can take over, and they could become the majority population, I am sure they would ask for the same thing within their province. However, it is only within Quebec that we have a cultural group, the French-Canadians that are such a huge majority. In the other provinces there really is no huge majority. In provinces where there is a nice balance, like New Brunswick, we have the adoption of Acadian and Anglo cultures, basically equal, where they have accepted official bilingualism, where they are the only province that is officially bilingual...

(Tape C-1615 follows)



(Mr. Shulman)

~~...in New Brunswick, we have the adoption of the Acadian and Anglo-Protestant
basically equal, where they have accepted official bilingualism. It is the
only province that is officially bilingual, because it is the reality of their
province.~~

1610

I am worried that this "distinct society" clause is going to step on the other distinct societies in Quebec, the English-speaking community, which is not in and of itself a distinct society; there is an Italian community and a Jewish community. I also do not like this idea that somehow or other everywhere else in Canada is another distinct society. I have lived in Alberta, Saskatchewan, north, south, Ontario and throughout this province. I will tell you, I felt that I was in a different society and different cultures in the different places I lived in. I felt it within a province, moving from the northern end of the province where there are native communities to a southern rural community. I felt I was in two different societies with completely different cultures, and yet there was some underlying thing that made them all the same. We are all Canadian.

This distinct society thing says, "No, we are not all Canadian. They are Quebecers." We have got into the habit--the Prime Minister standing up: "This is what Canadians and Quebecers want," as if somehow or other there are two different people, there are two nations in this country of ours. This is one nation. That is what the people want. That is what the people of Quebec have said they want. They said it in 1980, and I do not see where they have ever asked for anything different since then.

The Prime Minister of Canada, Pierre Elliott Trudeau, gave them the Charter of Rights to defend themselves. I do not know why the heck we are deciding to take it away from them. Everybody in this country--while we were just getting used to have this charter and seeing it have an impact in this country, seeing individuals suddenly being able to stand up for their rights and get something individually that they were unable to acquire before, to defend themselves, because they could not do it before, suddenly they are being told, "We are not going to let you do it in the future."

I will grant there are no governments in this land today, with the possible exception of British Columbia, that would do some very strange things in terms of overriding the Charter of Rights, but I am not prepared to rely on that guarantee from the next governments, from the next people who are elected down the line. World history has shown that given the opportunity, governments could rise to power that would do some of the most outrageous, insane things, and the Charter of Rights is the last defence against governments that do that.

I believe we have to preserve that, that Quebec society is protected through its government, through the electoral process, through the legislation that is passed through that government. They do not need a constitutional amendment. They are not weaker than the rest of us. That is the point Pierre Elliott Trudeau kept making. They do not need special guarantees. We are all equal in this country, and there is no reason why they as some form of collective, whatever that may mean, have to be given these special powers. I would like to state I feel that the Charter of Rights is that last defence. It is the power the people have to protect themselves as a group or as

individuals. We do not need a "distinct society" clause.

Mr. Chairman: I think that in the course of your presentation, and particularly in your remarks just now, you have underlined very clearly your views which have been set out forcefully in the paper and in the answers to our questions. You have brought, I think, a slightly different angle of perspective on some of these issues, and we want to thank you very much for coming and being with us this afternoon and for presenting not only your paper but also the copy of Professor Forsey's remarks. I think we have a distinct idea, if I can put it that way, of your thoughts and views and we thank you for them.

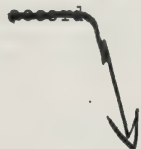
I now call upon Lynda Palmer to please come forward and take a chair. We have all received a copy of your presentation, Ms. Palmer. Perhaps, I will simply ask you to proceed with your presentation, and we will go ahead with questions after that.

LYNDA PALMER

Ms. Palmer: Mr. Chairman and committee members, I would like to begin by thanking you for the opportunity to speak with you this afternoon.

I come before this committee not as a lawyer or constitutional expert but as a very ordinary Canadian who is deeply concerned about a number of provisions within the Meech Lake constitutional accord.

C1615 follows



(Ms. Palmer)

...constitutional accord, outraged at the undemocratic process by which my constitution is being amended and, finally, saddened by what I believe will be the devastating impact of this document on my country.

The components of the accord with which I am most concerned are individual and equality rights, an alteration in the balance of powers, the opting-out clause and the amending formula.

Let me begin with individual and equality rights. The "distinct society" clause and clause 16 may have a very detrimental impact on individual and equality rights. It is my sincere wish, as is the wish of all Canadians, to see Quebec's signature on our Constitution. I am quite aware that to this end some compromises must be forthcoming but not at the expense of individual rights or of the country as a whole. I do not believe that Quebecers would want this either.

Clause 16 of the accord specifically exempts existing multicultural and native rights from being affected by the accord. This leaves an opening for judicial interpretation that other individual rights, of women, minorities, the disabled and so on, are affected by these provisions.

Maybe we could look at the infamous Lavell case of 1974. Indian women challenged their loss, by law, of their Indian status when they married non-Indian males. The Supreme Court faced the question of whether a woman's equality interest should prevail over the interest of a group of which she was a member. The majority of the court ruled against the equality argument saying that the federal government had the constitutional right to impose requirements that discriminate against women. That the Lavell case is about the conflict between sex equality rights and one type of distinct society is clear from Justice Laskin's words: "...the paramount purpose of the Indian Act to preserve and protect the members of the race is promoted by the statutory preference for Indian men."

It is widely recognized by constitutional experts that section 15 of the charter was designed to prevent a repetition of the unfortunate reasoning of this case. Now, two years after section 15 came into force, women are wondering whether the wheel has come full circle.

If indeed the "distinct society" clause and clause 16 were not intended to override or supersede women's rights, why not make that crystal clear now? We cannot afford to risk a future court interpretation that would impact negatively on women's rights.

Clarity could be achieved by deleting clause 16 and adding a provision which would say that charter rights prevail over the accord.

My second area of concern is the alteration in the balance of powers. Too much power is being transferred to the provincial arenas. Some of these additional powers will come through the province's ability to name provincial representatives to the Senate and the Supreme Court of Canada. This is an incredibly profound alteration in our constitutional framework. I recognize that Canada is an extremely vast country with diverse regional strengths and weaknesses and each province is, to me, distinct in its nature. In order to meet each province's specific needs, there must be some decentralization

within our constitutional framework. We are, in fact, highly decentralized now. The Meech Lake constitutional accord ravages the federal government leaving it weak, impotent and powerless to speak and act on behalf of the country as a whole.

Senate and Supreme Court appointees will owe their allegiance to the province which put them there and they will be impaired in their ability to make decisions according to their conscience or for the best interests of the country.

Former Primer Minister Pierre Trudeau warned that with too much decentralization in the name of cultural security and provincial autonomy, the country risks fragmentation and disorderly competition in a world where, to an increasing extent, only the strongest and most disciplined can survive and prosper.

The section of the accord which provides for this method of legislative and judiciary appointment should be deleted.

My third concern is the opting-out clause. The accord probably makes it impossible for us to have national cost-shared programs again in areas of education, skills training, welfare and so on. One cannot help but be concerned about what will happen to our health care system. The accord allows provinces not to participate in national cost-shared programs "if the province carries on a program or initiative that is compatible with the national objectives." The vagueness of this statement raises a number of questions. Who will define the national objectives? What do "initiative" and "compatible" mean?

C1620 follows



(Ms. Palmer)

~~... program or initiative that is compatible with national objectives." The vagueness of this statement raises a number of questions. Who will define "the national objectives?" What does "initiatives and compatible~~
~~mean?~~

1620

Standards which have been so instrumental in the success of national programs, such as medicare, are not mentioned at all. The health care system in our country is a cost-shared program, which Canadians are truly proud of and value tremendously. It reflects a philosophy common to all Canadians and is about ourselves as a society.

No matter on which side of the abortion issue each of us stands, it is difficult to ignore, and not be disturbed by, the inequalities from province to province related to access to the health care system for women since the Supreme Court handed down its most recent decision on abortion and women's rights. Whereas, right now the federal government has funding leverage and is thereby able to ensure that standards such as accessibility, portability, comprehensiveness and universality are being met, this is unlikely to be the case under the Meech Lake constitutional accord.

This opting-out provision, with such lack of clarity, leaving so many questions unanswered, is difficult to amend, and therefore should not become part of the Constitution.

My last area of concern is with the amending formula itself. The accord alters the future amendment procedure by requiring unanimous consent of all the provinces to change significant national institutions such as the Senate, the Supreme Court and the establishment of new provinces.

Consensus was achievable in striking this accord because Mr. Mulroney gave everything away to the provinces. The federal committee which conducted hearings this past summer identified flaws in the accord and went on to say that the premiers and the Prime Minister should move to fix them at next year's constitutional conference.

Obtaining unanimous approval is extremely unlikely in the future, and the ability, therefore, to correct these flaws becomes highly unlikely.

We should therefore return to the amending formula in the current Constitution for all constitutional amendments: consent of seven provinces accounting for half the national population.

Let me finally express my outrage at the process which has been utilized to amend my Constitution.

It was not made known to Canadians that serious discussions about amending the Constitution of Canada were taking place until the press published Mr. Trudeau's comments on May 27, 1987. The accord was signed by the provincial premiers and Mr. Mulroney one week later, on June 3, 1987. By August, the federal government was busy making a show of holding public hearings. This compressed timetable, however, did not allow individuals and groups the necessary time to study the impact of the accord and prepare

L. Palmer

statements. It is extremely disturbing now, to hear Mr. Peterson's repeated rejections of amendments while these hearings are still in progress and before this committee has had an opportunity to make recommendations.

There are flaws and ambiguities in the Meech Lake constitutional accord which will have serious implications for all Canadians. I love my country very deeply and I cherish all that being a Canadian means. My Constitution is the framework upon which the fabric of this nation is woven and its design determined. It impacts on me, Lynda Palmer, in my day-to-day activities and my relationships.

Why would we want to endorse, knowingly, such a flawed document? I am painfully sensitive to the emotions and risks involved in seeking amendments now. I am sorry that Canadians were not allowed to participate before this accord was signed on our behalf, in the first place.

It is, however, my firm conviction that we are risking our nationhood if we endorse the accord in its present form. I believe if we do not seek amendments now, later will be too late.

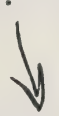
Mr. Chairman: Thank you, very much. I would also want to notice, as we have, that a number of groups have come forward, but we are particularly appreciative when individuals take the time and effort. I am sure if one has not done it before, there may be something somewhat intimidating about coming before some legislative committee. We do appreciate your coming and making your present.

We will begin questions with Miss Roberts, Mr. Eves, Mr. Breaugh and Mr. Keyes.

Miss Roberts: Thank you very much for your presentation. It was interesting and it certainly must have taken a lot of thought and a lot of research on your part to come forward with such an all-encompassing group of thoughts.

It would appear that your fear of changing of the balance of power and, indeed, if you look at sections 91 and 92 of the British North America Act which set out the various areas of jurisdiction, what you are suggesting is that there be a change with respect to how those...

C-1625-1 follows.



(Miss Roberts)

~~... fear of changing the balance of power and, indeed, if you look at sections 91 and 92 of the British North America Act which set out the various spheres of jurisdiction, what you are suggesting is that there be a change with respect to how these are set out now. You do not like them, OK, so you want to change the Constitution anyway, whether we do it through Meech Lake or some place else.~~

Ms. Palmer: No. How it was before this, was fine.

Miss Roberts: But there are certain areas that are exclusively the jurisdiction of the provinces, such as health care accessibility. You do not want it to be the jurisdiction of the province. You want that to be a completely Canadian program. You want there to be something to force each province to have the same type of health care system.

Ms. Palmer: I think we have that in the current system as it is now. If you look at some of the initiatives and so on that have gone on, the federal government does have funding leverage because they are cost-shared programs.

Miss Roberts: I know, but it is only as a result of negotiation between the two. It is the exclusive responsibility of the provinces and they have been allowed to negotiate. That is all I am trying to point out.

Ms. Palmer: But they have been able to establish standards that they have taken stands on, which have made them universal and accessible throughout Canada, whereas they would not have been before.

Miss Roberts: OK. But you still want to change the difference between the exclusive jurisdiction that the province has and the exclusive jurisdiction that the federal government has. You want a stronger national government. Is that not correct? You want more national programs that make it easier for people to have the same level of social services across their country.

Ms. Palmer: No. I did not say that.

Miss Roberts: OK. You do not--

Interjection.

Miss Roberts: I will not pursue that any further. The other question I wanted to ask you about is, you do not believe in the independence of the judiciary either. You feel that whoever appoints them, they owe their allegiance to that person.

Ms. Palmer: Yes, I do. OK. Thank you.

Mr. Eves: I would like to thank you for your presentation. It is kind of refreshing to see someone who is neither a lawyer or a constitutional expert appear before the committee--an ordinary Canadian, as you put it. I think it is a very thought-provoking and sincere presentation and I think you should be complimented for it.

Ms. Palmer: Thank you.

Mr. Eves: I would like to touch upon a few areas of your paper. I quite agree with the comments you make about clause 16. It is a viewpoint that many groups that have appeared before this committee, regardless of what their own interests were, share. There is, undoubtedly, room for some clarification about the protection of rights under the charter in clause 16 of the Meech Lake accord.

You comment about the legislative and judiciary appointments. There is another facet there that you did not touch upon, but people from the territories, be it the Yukon and Northwest Territories, are Canadians as well and by this process are for all real intent and purpose excluded from appointment to either the Supreme Court of Canada or to the Senate, assuming that a provincial Premier--he or she--is going to be far more likely to recommend somebody from their own province as opposed to somebody from a territory.

The opting-out clause, I think, is one that really goes to the heart of the whole Meech Lake accord. You have been sitting back there this afternoon and for some time this morning, I believe, and I am going to ask you the same question that I have asked several other groups: Do you think that this clause, in your opinion, could be rectified by reinstating the word "standards," as opposed to "objectives," or do you think that the opting-out clause, the way it is now, is so unworkable, from your point of view, that even that would not save it?

Ms. Palmer: Putting the word "standards" in there would make it much more acceptable to me.

Mr. Eves: Though I may agree with your comment about the amending formula, I think your chances of getting that changed now are probably slim or none in reality once the 10 premiers have agreed to it. I think your comments about the process are very valid.

I guess this is the last question I would like to ask you. If these areas that you have addressed your concern to were addressed by the way of amendment, would you be satisfied, or do you think, as several other groups and individuals that have appeared before this committee, that it is such a mess...

C-1630-1 follows.



(Mr. Eves)

~~that you have addressed your concern to, were addressed by the way of~~
~~amendment. Would you be satisfied or do you think as several other groups and~~
~~individuals that have appeared before this committee, that it is a mess~~
and there has not been any public input prior to the drafting that we should
maybe be starting from square one, I will not ?? it. Which would be your
preference?

1630

Ms. Palmer: These are only four of particular areas that I felt I
could comment on because I know a little bit of the knowledge basic. I do have
other concerns, immigration is another area. I think it is a mess basically. I
think it need to go back into the drawing board.

Mr. Eves: Thank you.

Mr. Keyes: I just might say to Ms. Palmer, I am sure that her
presentation here which is maybe unknown to her watched by thousands across
the province, this moment will probably help to and now that you have been
able to get through it all so well, that will help to prop more the citizens
to come forth at it. Is it fair for me to say that from the total context you
??, you would be happier if the Meech Lake accord had never been seen and that
everything carried on as it was before, and I do not want to read to much into
it but as you said delete one item and return the amending formula. I seem to
sense that you would have been very happy if we had kept everything exactly as
it was prior to Meech Lake at the beginning. Yet I wonder if that is your
point of view. How you can rationalize that with the amount of concerns of an
expressed by different groups across the country with regard to their position
in Confederation. I just want to narrow that in after you answer that to the
one particular point about reform of the Senate or the Supreme Court because
even in there you have suggested that the appointment or recommendation by the
provinces is inappropriate since it would tend to bias the judges of the
Supreme Court in dealing with decisions. What type of change if any do you
feel would be appropriate in either the appointment to the Senate or to the
Supreme Court? I will take your first part about your general--I want to be
corrected if that is where I have viewed your papers. You felt status quo
would be much better.

Ms. Palmer: OK. Let me start with not exactly status quo because I
think we have an obligation to negotiate and try and achieve Quebec's
signature on the Constitution and so in that sense no. I am a little bit
familiar with some of the five points that Quebec has been saying they wanted
in order to come in. Obviously those have come out in this and I am not in
favour of those so I guess saying that I realize some compromise is necessary,
what we ended up with here is not acceptable to me.

Mr. Keyes: Because we went too far.

Ms. Palmer: I think we went too far and I think we really risk what
we have done has made every province has someone else this word distinct keeps
coming up but we are all very different. If you have gone to New Foundland and
tried to understand the New Foundlander, you know, their language is also very
different and they have a very distinct culture. I do not think we should say
that, this country has to be more than just the some total of a bunch of

Ms. Palmer

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little distinct provinces. So there has to be something that we all buy into and I think that was beginning to happen but I think Mr. Mulroney too freely gave everything away. I do not think there was the strenght from the federal perspective as the leader of this nation to do some nation building. I think he too quickly gave everything away.

Mr. Keyes: Can you turn to the one then on Senate reform because again I suggest you do not indicated any alternatives but rather leaving it the way it has been.

Ms. Palmer: The reason I commented on it the way I have and the fact that I think that method of appointment gives more strenght to the provinces and I think we have to have--that still has to be federal ??. I am nervous about having a list of names submitted by the provinces from which the Prime Minister will choose. I mean, I worked in an organization that is very complex, I work in health care and if the president of my hospital told each department in the hospital to submit a list of names for her that were going to be empowered with those kinds of decisions, boy the name that I put forward and that is, I think that is human nature you would not want to think they were representing their interest and I do not think that is necessarily the best thing for the country as a whole.

Mr. Keyes: But you have some protection in if there is one to be chosen and seven names are submitted, you have a broad range of qualified people. You then have a much better chance of the impartiality to some extent. You do not make any reference on...

(C-1535-1 follows)



~~to be chosen and seven names submitted. People have a right to be heard. You then have a much better chance of having a more representative Senate. And you do not make any reference to the Senate. Do you feel that the Senate, as it functions today, is appropriate without any changes in either the appointments to the Senate or the way it operates?~~

Ms. Palmer: I do not feel sufficiently qualified to answer that. I know there are a number of people who are interested in a triple E Senate. I cannot honestly tell you whether I think that is a good idea, because I do not know the issues well enough. Again, I worry with the amending formula that if this is not right, how in the world are we ever going to change it? Because I do not think you are going to get a unanimous decision again.

Mr. Keyes: So perhaps in summary then, you are not so much opposed to the fact and acknowledge the fact that a constitution of any country is an ongoing developmental process, but the amending formula, as now proposed, would make it much more difficult to ever have any continued development in the future.

Ms. Beer: Mr. Breaugh, Mr. Offer and Mr. Cordiano.

Mr. Breaugh: You are making a believer out of me that we ought to exclude all the lawyers and constitutional experts in this process. You are the first person who has been smart enough to admit that there was actually something in here that you do not know.

I share a lot of the concerns that you have expressed, particularly the ones about the process. In part, it is unrealistic to expect everybody in this country to know that bureaucrats met and committees met, and all of that happened. But I think what stands out for most people as the bare, blunt truth is that 11 people went behind closed doors and drafted something and even though that was revised somewhat, you just cannot escape that. The process that we are in now is certainly not the most desirable one, but there is a threat that democracy might break loose somewhere in the country. At least there is a set of public hearings here in Ontario.

I want to talk just a little bit with you about this amending formula stuff, because one of the problems that I have is this. With all of the difficulties I have with the accord and the process, and who is left out when we get to it, I would be comforted somewhat if I felt there was a way to fix it. When you read the fine print on the amending formula, you find that it is not as bad as some people portray it. You do not need unanimous consent on everything; you would use the existing formula. If it was good enough last year, it is probably going to be good enough next year. But you still get down to a point where it does require unanimous consent for some things. I am struggling with this notion. I am particularly struggling with the notion about the admission of provinces, for example. How is that going to work?

I want to get your response to this. The one thing that has occurred to me, the current amending formula and the one that would apply if we excluded the unanimous consent thing, is that seven of the provinces and 50 per cent of the population could make the change. What would happen if we designed a new Canadian Senate with real powers and half the people in Canada did not agree with that? Could we proceed? Certainly if we used the amending formula, we could do that. But could the Senate or the Supreme Court really function if

Mr. Breagh

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half the population of the country did not agree with that change? So in that light, this unanimous consent thing takes a little different form. In other words, if you are going to make major changes in really important federal institutions, that in those carefully lined up areas, maybe it is necessary to have unanimous consent. In that light, how would you feel about that?

Ms. Palmer: I would be concerned. I hate to use Prince Edward Island, because it gets used all the time. But this unanimous amending formula, how do you feel about having that small percentage of the population of this whole country stopping something?

Mr. Breagh: Right. That is true. I will just pursue this for a bit because I think it is important. If we did not, for example, if we said that three of the 10 provinces, or representing half the population, which is possible, did not like the proposal for changing the Supreme Court of Canada--they represent provincial governments. They have a large percentage of the population behind them. They could very well take it into litigation. In other words, they could go to court, and many of them would; some already have done this kind of thing.

I am seeking your view of this thing because I am perplexed by it. I originally saw the unanimous consent provisions as being totally improper, but the more I think about it, the more I--

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(Mr. Breaugh)

kind of thing.

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I am seeking your view of this thing, because I am perplexed by it. I originally saw the unanimous consent provisions as being totally improper, but the more I think about it, the more I think if we do not get unanimous consent going in for major institutional change, like the Supreme Court or the Senate, the other option is the governments who are left out will retain the right to go to court and so will all of our citizens. So if it is not a clear, flat-out consensus that we are operating with here, it is off on the wrong foot for starters. As someone who is not a lawyer and a constitutional expert, I would like to hear what would be better--to leave the current amending formula and let people go off to court and sue that the changes through the Supreme Court of Canada are not wise and should not proceed, that that changes that are proposed in the Senate, maybe a little bit more by most of the people in Canada, are wrong. That is kind of the bind we just got out of.

Ms. Palmer: It seems to me that the amending formula we were working with before Meech Lake was better able to represent the country as a whole. In other words, it was more representative of the population.

Mr. Breaugh: Yes, in most instances.

Ms. Palmer: I guess from my limited knowledge and the way I see, that would be far preferable to me.

Mr. Breaugh: Ok. Just give me one more quickie. The problem I have with it--I think I could generally ascribe to that point of view. The difficulty is that the reason we have Meech Lake, to be blunt about it, is that one province, one out of 10 in Canada, objected to the previous constitutional changes. That brought us to this situation with this amending formula--seven provinces and half the population. One province stood us on our ear. If we proceeded with changes in federal institutions like the Senate and the Supreme Court without all of our provinces agreeing that those changes make sense, we would have this same situation extrapolated every time we made a major change in a government institution.

I do not know how practical this unanimous consent thing is, but I am beginning to see the other side of the story, that if we do not have unanimous consent before we make these changes, we leave ourselves open to the same situation happening again and again. Every time one big player does not like the changes that are proposed, we may be into another Meech Lake deal.

Ms. Palmer: But I think you will agree as well that the people of Quebec have not voted on this either.

Mr. Breaugh: Yes.

Ms. Palmer: It has not been put to the population. It is the premiers and the Prime Minister basically who hammered it out and signed it.

Mr. Breaugh: Yes. This happened a couple of times today. To be fair, we have to put on the record today that every single member of the Quebec National Assembly voted for this accord. So as much as I would like to portray

Mr. Breugh

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Boo Boo Bourassa is a bad person, he is not alone in this instance.

Mr. Cordiano: I will not take up too much of the committee's time. I just wanted to congratulate Ms. Palmer for coming before the committee. We have had some discussion on this with regard to some of the points you have made. I respect most of the things you have put forward, and to tell you that your brief is very thorough today, and also to let you know that one of the things that we are grappling with, apart from some of the very important issues that you have pointed out here--and you have touched on this briefly as you went through your brief--is the whole question of process. We, as a committee, are looking at that to try and come up with some recommendations for future constitutional reform and what mechanisms or what processes that might--what forms those might take place in. I think there is some room for us to make recommendations that are meaningful. I think we will probably be struggling with this when we do write our report and try to come up with just how to go about changing the Constitution and a process that makes sense to the average citizen.

So I think part of the problem that we are having with this is that it is the way in which it was arrived at. People felt as though they were left out and certainly I can see where people would feel that way. On the other hand, I was just taking note this morning--and I asked one of the witnesses this question, a very learned professor--the fact is it has never been done any other way in this country. Constitutional change is always taking place with a select group of people, namely, premiers of the various provinces and the federal government, and the Senate, the upper chamber, involved in constitutional change. That is the way it has taken place. I think what we are dealing with here is a new reality. It is some thing that is evolving into something that we are

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~~federal government and the Senate, the upper chamber, involved in constitutional change. That is the way it has taken place.~~

~~I think what we are dealing with here is a new reality and something that is evolving into something that we have not seen in the past.~~ Perhaps there was some more flexibility with a number with a number of groups making presentations before the federal government prior to 1982, prior to the repatriation of the Constitution. There was some room for people to make presentations. I think that took place. But to come up with new mechanisms I think is essential now, and that is something that perhaps we can work with.

I just wonder if you have any thoughts or ideas on that. We never discussed this in the past, but I wonder if you have any further thoughts on that.

Ms. Palmer: I do not have any brilliant ideas. I was interested in the professor though who suggested that--well, he was talking about Ontario but I assume he meant provincial--

Mr. Cordiano: This afternoon.

Ms. Palmer: I would be interested in learning more about that. I do not have any bright ideas myself, but I think it is important somehow to get the people more involved before it is already a fait accompli.

Mr. Cordiano: Do not feel bad. None of us do. We are all dealing with this in a very difficult way. Thank you very much for coming today.

Mr. Chairman: It is sometimes overlooked, but those of us who do, at some point in our lives, manage to get elected are also, in many respects, ordinary and do not have--

Mr. Breaugh: Some real ordinary.

Mr. Eves: Some less than ordinary.

Mr. Chairman: But we are not by any means expert in many of the things that we deal with, and I think there is merit to that. Indeed that is probably the way it should be. So I think a lot of the questions that you have had--and as Mr. Breaugh said, we really appreciate your frankness at times in saying, "Look, I do not know," or "I have to think about that," because we are really in that situation whereas we go through these hearings, we hear a great many things that we have not necessarily heard before, or perhaps not in that context, or that we are wrestling with. So we appreciate then when you come forward, as have others, and say, "Look, I do not necessarily have all the answers, but I am very concerned about my understanding of these different issues."

So again I want to thank you for taking the time in preparing this submission, being with us this afternoon and answering all of our questions. Thank you again.

Ms. Palmer: Thanks for your attention.

Mr. Chairman: The committee will stand adjourned until 10 o'clock tomorrow morning here in this room.

The committee adjourned at 4:47 pm.

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